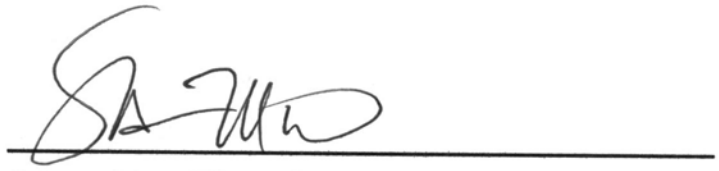
12/17/18

AMENDED

Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
October 19, 2018

This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Alabama Environmental Management Commission on October 19, 2018.



Samuel L. Miller, Chair
Alabama Environmental Management Commission

Certified this 14th day of December 2018.

AMENDED

Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
October 19, 2018

Convened: 11:00 a.m.
Adjourned: 11:53 a.m.

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Part A

MEETING OF THE ALABAMA ENVIRONMENTAL
MANAGEMENT COMMISSION
OCTOBER 19, 2018
11:00 A.M.

LOCATION: Alabama Department of Environmental
Management Building
Alabama Room
1400 Coliseum Boulevard
Montgomery, Alabama 36110

A P P E A R A N C E S

COMMISSION MEMBERS PRESENT:
H. Lanier Brown, II, Chair/Newly appointed Vice Chair
Samuel L. Miller, M.D., Newly appointed Chair
John (Jay) H. Masingill, III
Ruby L. Perry, D.V.M.
Mary J. Merritt
Kevin McKinstry
*Tom Walters

ALSO PRESENT:
Robert Tambling, EMC Legal Counsel
Kayla Currie, Assistant Attorney General
Lance R. LeFleur, ADEM Director
Debi Thomas, EMC Executive Assistant

MR. BROWN: Good morning. We'll call the meeting of the Alabama Environmental Management Commission to order. Note that we have a quorum.

First item on the agenda is consideration of the minutes of the meeting held on August 17, 2018. The minutes have been circulated to all Commissioners for review prior to this meeting and Chair will entertain a motion regarding the minutes.

DR. MILLER: I move we adopt the minutes of the August 17th, 2018 meeting as circulated.

MR. WALTERS: I'll second.

MR. BROWN: All in favor?

COMMISSIONERS: Aye.

MR. BROWN: Passes. The next item on the agenda, this one makes me smile, is the election of the Commission Chair and Vice Chair. The Commission will consider the election of the Chair and Vice Chair and I will entertain a motion from the Commission regarding the election of a Chair.

MS. MERRITT: I move to accept Dr. Sam Miller as the chair of the Commission.

MR. MASINGILL: I second.

MR. BROWN: All in favor?

COMMISSIONERS: Aye.

MR. BROWN: Passes. Next we will consider entertaining a motion from the Commission regarding the election of a Vice Chair.

MS. MERRITT: I move to accept Lanier Brown as the Vice Chair of the Commission.

DR. MILLER: I second.

MR. BROWN: Any discussion? Chair calls the question. All in favor?

COMMISSIONERS: Aye.

MS. THOMAS: Would y'all like to switch chairs?

MR. BROWN: Yes. Can I sign it first?

MS. THOMAS: Well, too late.

MR. BROWN: I guess y'all know why Dr. Richardson resigned now.

*Amended per motion of December 14, 2018, Commission meeting.

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DR. MILLER: While we pass this down the road here, I would like to call for the Director to give us his report today.

MR. LEFLEUR: Good morning to all and welcome to the first meeting of the Alabama Environmental Management Commission Meeting for FY 2019. A special welcome to our new Commissioners, Mr. Walters who is serving in the Professional Engineer position, and Dr. Perry, welcome.

DR. PERRY: Thank you.

MR. LEFLEUR: Who is serving in our veterinary position and Mr. McKinstry who is serving in the biologist position. Welcome all of you. Your name tags are not to identify you as new commissioners, yours being different than others, simply that you were named on Wednesday so there wasn't time to have permanent ones. You'll have them at the next Commission meeting though. But welcome to all of you.

Dr. Miller, congratulations or condolences, whatever the case may be. Thank

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you for taking on the mantle of chairman now that Commissioner Brown has maxed out on his allowable terms as chairman.

Today's report will update the Commission on the Department's budget status, review the proposed 2019 Unified Strategic Plan, disclose the Department's 2018 and 2019 operating plans and update you on several ongoing Departmental initiatives.

Our fiscal year 2019 began on October 1st. FY 2018 closed out with balanced funding and expenditures as anticipated. Our FY 2019 state appropriation is the same as fiscal year 2018. On the federal side, we are operating under a Continuing Resolution until a fiscal year 2019 federal budget is adopted. The Continuing Resolution means our federal funding this fiscal year will continue at the same rate as last year until a final federal budget is adopted.

Another milestone on funding for a new field office in Mobile was passed when the package including our project was put out

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for public comment on October the 5th, 2018. A public meeting will be held on November 7th, 2018, prior to the November 20th, 2018, close of the comment period. After the public comment period and the public meeting, the Alabama RESTORE Council will prepare a response to any comments received and the final state expenditure plan will be sent to the Federal RESTORE Council for approval. At this time things still appear on target for funding shortly after calendar year-end. The Department has performed an analysis of the historic and projected future geographic dispersion of the workload in the southern part of the state to help with identifying the optimum location for the facility.

It's been five years since the 2014 Unified Strategic Plan was adopted, so as set out in the ADEM Administrative Code, it's now time to update the plan. At the April Commission meeting the strategic -- a Strategic Planning Ad Hoc Committee was appointed and the public was invited to

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provide input to the plan. As part of the process to develop a proposed 2019 Unified Strategic Plan, EPA's recently released 2018 through 2022 Strategic Plan was reviewed for consistency.

You have received a red-lined copy of the proposed 2019 Unified Strategic Plan and copies of the proposed plan are available on a table in the lobby to any interested party.

Later in today's agenda, there'll be a -- we will receive a recommendation from the Commission Strategic Planning Ad Hoc Committee regarding the proposed 2019 Unified Strategic Plan that was developed jointly by that Committee and the Department. It is anticipated the Commission will consider adopting the 2019 Unified Strategic Plan at its meeting on December 14, 2018. I'll walk you through the major sections of the proposed plan now.

The plan begins by setting out certain foundational elements. First is the

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Mission, Values and Operating Guidelines for the Commission and the Department. Next, the Roles of the Commission and the Department, and third, the Vision for Achieving the Most Meaningful Results For the Environment.

The Mission, as set out in the statute that created the Commission and the Department is to "Assure for all citizens of the state a safe, healthful, and productive environment."

The Values that Guide the Operation of the Commission and the Department are science-based decisions and policies, mutually respecting the differing roles of the Commission and the Department, transparent communication, using resources wisely, and acting on agreed upon goals.

The second foundational element of the Unified Strategic Plan deals with the roles of the Commission and the Department. It begins by recognizing that the Commission and the Department have differing roles. The Commission's role is to set environmental

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policy, and they do this by promulgating rules which is a legislative-like function, hearing appeals of administrative actions which is a judicial-like function, and managing the Director of the Department which is an executive oversight role.

The Department's role is to implement Commission policy by managing permitting, making compliance determinations, and taking necessary enforcement actions.

Finally, it's the Department's role to provide timely quality information to the Commission to assist in policy setting decisions.

The third foundational element is the vision for Achieving the Most Meaningful Results for the Environment which is focused individually on the air, land, and water media. For the Air media, it is meeting or beating federal ambient air quality standards. For the Land media, it is the safe and responsible management and disposal of solid and hazardous waste, cleaning up and

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redeveloping contaminated sites, and promoting recycling. For the Water media, it's the attainment of water quality standards and all use classifications and minimizing the effects of storm water runoff.

These three components are foundational and are constant in each update of the Unified Strategic Plan.

The broad long-range goals in the Strategic Plan are an Effective and Responsive Commission, a High Performing Work Environment, Credible Relationships With External Stakeholders, and Efficient and Effective Departmental Operations.

Significant progress toward achieving these key goals has been made during the last five years covered by the prior Strategic Plan, however, the goals remain relevant and are being reaffirmed in the proposed 2019 Strategic Plan.

Likewise, the broad strategies for achieving those goals are being reaffirmed including effective communication between the

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Commission and the Department; effectively addressing emerging issues, regulations, and interaction with the public; robust Departmental -- excuse me, Departmental support for the Commission; steady Departmental focus on goals; maintaining high quality Departmental operations; finally taking all necessary steps to assure high levels of regulated industry compliance. Additional details regarding each of the goals and the strategies for achieving those goals are set out in the proposed 2019 Unified Strategic Plan document you have been provided.

A few moments ago, I mentioned that EPA recently released its 2018 through 2022 Strategic Plan. That plan has three elements to it, deliver on the core mission of clean air, land, and water and ensure chemical safety. Second, rebalance the power between Washington and the states to achieve results, and administer the law as Congress intended.

The EPA Strategic Plan also

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includes a series of one year goals. While many of the EPA goals relate largely to federal matters, many directly and indirectly involve the states. There appear to be no conflicts with any matters that relate to our proposed 2019 Unified Strategic Plan or the 2019 Departmental Annual Operating Plan. The 2018 through '22 EPA Strategic Plan is in fact much more in harmony with our strategic and operating plans than was the case under the prior administration.

In addition to reviewing the proposed 2019 Unified Strategic Plan with you today, I am also providing you with a copy of the Department's 2019 Annual Operating Plan. The Departmental Operating Plan that is developed each year reflects the key goals and strategies in the most recent Unified Strategic Plan. The annual operating plan identifies specific short and intermediate term objectives and actions to implement the goals of the Strategic Plan.

It's appropriate for the

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Department to be held accountable for executing its annual operating plan as a means to achieve the objectives of the Strategic Plan. Likewise, the performance of Departmental personnel is measured in part by the level of challenge in their individual goals and their success in meeting those goals. In order to track the Department's efforts throughout the year in executing the annual operating plan, prior to each Commission meeting, it's been my practice to send you a memorandum titled "ADEM Update," which among other things addresses progress on achieving the objectives set out in the Department's Annual Operating Plan. Those six memoranda, one prior to the each of the six Commission meetings, have served as a running update of execution of the FY 2018 Annual Operating Plan, so I won't go into the detail of repeating that information, however, I would highlight two broad areas in both the 2018 and 2019 Annual Operating Plans, namely, the emphasis on EPA work plans and the

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Department's automation efforts.

For many years, very detailed annual work plans have been negotiated between EPA and the Department which cover each of our four major programs, NPDES, Safe Drinking Water, Resource Conservation Recovery Act, and the Air program. The work plans set out how funding will be spent and specific details on what work will be accomplished. While meeting or exceeding the EPA work plan requirements for those four programs are only four of the thirty-five total elements under the major goal of Efficient and Effective Departmental Operations, they cover most of the day-to-day work of the Department. I am pleased to report that in 2018, the Department continued to meet or exceed all EPA work plan requirements as it has done for many years.

Automation in the area of e-enterprise and e-business continues to be an important means to reduce costs, increase quality and better serve the public. Our Permits and Services Division is where this

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work is done. Often overlooked because they support activities for all media, the IT branch of the Permits and Services Division is the driving force in the continued move torwards greater automation. It has been a major contributor to our ability to perform at a level among the highest in the nation while having the lowest funding in the nation. Many of the goals in the Department's Annual Operating Plan are tied to automation. Twenty of the thirty-five initiatives under the goal of Efficient and Effective Departmental Operations relate to automation. The red-lined copy of the FY 2019 Departmental Operating Plan showing changes from the FY 2018 plan, which has been provided to you, shows the details of the continued emphasis in this area. On the table just outside this meeting room are copies of both the proposed 2019 Unified Strategic Plan and the final 2019 Departmental Operating Plans, which are available to interested parties.

I would like to now update you on

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another matter in which a number of the Commissioners have expressed a personal interest. There have been some recent positive developments in the longstanding and difficult issues surrounding the Uniontown Wastewater Treatment System. Uniontown is an economically disadvantaged community in West Central Alabama. The combination of poverty and local clay soil that is ill-suited for assimilating waste water has led to a deteriorated municipal waste water system in need of very high cost upgrades in order to meet water quality standards that are protective of human health and the environment.

Despite significant efforts by the local elected leaders, funding for the upgrades was unavailable for a number of years and the system continued to degrade and remain noncomplaint with environmental regulations. The Department undertook enforcement action while working with numerous other parties seeking a solution to the engineering and

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funding challenges. When the Department's enforcement options were exhausted, the matter was turned over to the court as the only remaining option. Despite the court now having jurisdiction over the matter, the Department has continued to work with others seeking a solution to the problem.

I am pleased to report today that as a result of the continuing efforts of local elected leaders, several local businesses, Senator Shelby, Congresswoman Sewell, Senator Jones, Congressman Aderholt, the Delta Regional Authority, the Alabama Rural Water Association, ADEM and especially USDA, it appears that funding will be available for the $31 million upgrade necessary to bring the Uniontown Wastewater System into compliance with water quality standards and environmental permit requirements. The upgrade calls for refurbishing the collection system and constructing a pipeline system to convey waste water to an existing facility in Demopolis some eighteen miles from Uniontown. To help

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keep the system viable and able to meet water quality standards in the future, several steps will be implemented including reporting -- requiring all homes within the city limits to be hooked up to city water and sewer service, establishment of a utility board with members required to receive annual training, and operation of the waste water system by a qualified independent contractor. This is good news.

A major element in both the Strategic Plan and the Annual Operating Plan is promoting a high performing work environment and an important part of that is encouraging the continued professional development of our personnel. Our people are the most important resource we have. Today I'm pleased to recognize those who have achieved significant milestones in their professional development. Earning the designation of Professional Geologist and Certified Public Manager is no small feat. Many hours of personal time, rigorous course

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work and testing are required. Those who have successfully completed the Certified Public Manager I program, please stand when I call your names. Daniel Arthur. Some of them may not be here today, Daniel. Ross Caton, Latoya Hall, Clay Messer, Aaron Roberts, Samantha Sims, Carla Snow. You all can remain standing if you would just a couple more minutes.

Those who have successfully completed the advanced Certified Public Manager II program, please stand when I call your name, Sandra Favors, Rick Kelsey, Jennifer McCord, Don Prempramot -- that's the best I can do.

We have one person who has achieved the Professional Geologist designation, Jason Wilson. Please stand and be recognized. Jason is not in here. Okay. congratulations to all of you.

(Applause.)

That completes my report. At this time I would like to add one additional personal note. Dr. Richardson's term expired

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on September 30 of this year and the Commission will consider making a resolution recognizing his service today. Dr. Martin's term also expired on September 30, and at the December meeting of the Commission, they will be considering a resolution recognizing his service. Service on the Commission is truly an act of public service. It requires many hours of preparation before meetings. It requires engaging with sometimes hostile advocates often from several sides of an issue. At times you are required to make unpopular decisions that are publicly second guessed and criticized. Your only reward is the satisfaction of knowing you are making a positive difference. I thank Dr. Richardson, Dr. Martin, and each of you for your service to our state and your wise counsel to me.

With that I will be pleased to answer any questions you may have. Yes, sir.

MR. BROWN: How long before the Uniontown Water Treatment Plan is executed and complete?

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MR. LEFLEUR: Well, it's not going to be this year. I think -- I think it will begin in 20 -- calendar year 2019. Once again, we as a Regulatory Agency regulate what comes out of the pipe. It's up to the local community to provide for the necessary infrastructure to do that, but my understanding is that they will be beginning the work in 2019. This will happen under the supervision of the USDA as well as an engineering firm that's been retained and a consulting engineer and the elected leaders over there.

MR. BROWN: Will there be any kind of interim?

MR. LEFLEUR: What are they doing in the interim?

MR. BROWN: Right.

MR. LEFLEUR: Well, the waste water treatment facility is operating. It is not operating within their permit requirements. However, the operation of the facility is under the jurisdiction of the courts. So we

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have been supplanted if you will in that. Our enforcement actions have gone as far as they can go and now they're reporting regularly to the court and the court is overseeing the process to come back into compliance.

MR. BROWN: Thank you.

DR. MILLER: Any other questions? Thank you, Director.

MR. LEFLEUR: Thank you.

DR. MILLER: Now I'm in a rather unusual position of calling upon myself to give a report of the Ad Hoc Committee for the adoption of a draft 2019 AEMC and ADEM Unified Strategic Plan.

Dr. Richardson was the chairman of that committee and he provided feedback and updates until the very last day of his term, which was September the 30th. Commissioner Merritt and I met this morning as the remaining members of the Commission. We all three read over the proposed document in detail and found it to be well written and found no need to make any substantial

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changes.

With that we would like to ask the Commission -- for someone on the Commission to move to consider the Strategic Planning and Ad Hoc Committee's recommendation and adoption of this draft document at the December 14th Environmental Management Commission meeting?

MR. BROWN: So move.

DR. MILLER: We have a motion. Do we have a second?

MR. WALTERS: Second.

MS. MERRITT: Second.

DR. MILLER: All right. Any further discussion? If not I call for the question, all in favor please say aye.

COMMISSIONERS: Aye.

DR. MILLER: All opposed no. The next item on our agenda is a report from the Commission Chair and my report is that I don't have a report. So we'll move on to item number six which is consideration of a resolution for former Commissioner Terry D.

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Richardson, Ph.D. I'm going to read this out loud so we can have it inserted in the minutes. It reads, Whereas, Terry D. Richardson, Ph.D., served as a member of the Environmental Management Commission in the biologist/ecologist position from June 2010 until September 2018; and whereas he provided experience, wisdom and foresight in the Commission's deliberations on significant issues and whereas his leadership abilities were recognized by his election as Vice Chair of the Commission, a position he held from June 2017 to September 2018; and whereas during his tenure on the Commission, he served as a member and Chair of the Rulemaking Committee and Chair of the Strategic Planning Ad Hoc Committee; and whereas his steadfast dedication to the service on the Commission will be greatly missed by his fellow Commissioners, the Commission's legal counsel and assistant, leadership and staff of the Alabama Department of Environmental Management, and many within the governmental

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regulated environmental communities. Now, therefore be it resolved that the Alabama Environmental Management Commission expresses gratitude to Terry D. Richardson, Ph.D., for significant contribution to a better environment and improved quality of life for the citizens of Alabama. This was dated today, 19th of October, 2018.

We at this point need to have a motion to adopt this resolution.

MR. BROWN: So move.

MS. MERRITT: Second.

DR. MILLER: Any discussion? If not, all in favor of the motion please say aye.

COMMISSIONERS: Aye.

DR. MILLER: All opposed no. All right. Item number, again, I call upon myself as Chair of the Personnel Committee at this time for a report on the Director's Job Performance Evaluation. We -- Chairman Brown notified us in the June Commission meeting that we needed to have the annual review of

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the Director's job performance. I as Chairman through Debi sent a letter inviting the public, the people on our list of normal correspondents and the Commissioners to provide feedback on Director's performance from October '17 till today. We received a lot of different opinions. We considered each of these opinions as important and we took them all into consideration. We also recommended that the chairman, me, discuss these findings with Director LeFleur. We left Director LeFleur's salary at the same level that it currently is because he's at the top of his pay grade for pay grade 90. He's at the last step. So there's no further step that we can take.

So at this point we would move to adopt a recommendation of the Committee, which was to study the comments and take them all in consideration, to leave the current salary of the Director as is, and for me as Chairman of the Committee to go and discuss the findings with Director LeFleur. And I will take a

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motion to adopt this recommendation by the Commission.

MR. BROWN: So moved.

MS. MERRITT: Second.

DR. MILLER: All right. Is there any further discussion? If not, I'm going to call for the question. All in favor say aye.

COMMISSIONERS: Aye.

DR. MILLER: All opposed no. The motion passes. I will get with Director LeFleur and discuss the comments that we received.

Our next agenda item is number 8, which is a consideration of proposed amendments to ADEM Administrative Code 335-1, General Administrative Regulations. This is a proposal to amend 335-1-1-.03 and 335-1-1.07, to modify language as it relates to the membership of the Commission in accordance with Act number 2018-454, which is the National Well Water Association position and to more accurately represent the location of the Commission records.

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The revisions to ADEM Administrative Code Rule 335-1-1-.07 was add, modify and delete appropriate forms. The Department held a public hearing on the proposed amendments on the August 8th, 2018, and I'd like to call on the Department for comment.

MR. KELLY: Good morning, Mr. Chairman, and members of the Commission. You stole all my thunder. You put that very well. We did hold the hearing on August 8th. There were no public comments. So therefore it is before you to approve. So at this time I would ask for your favorable consideration in answering any questions you have.

DR. MILLER: So this basically will expand this Commission membership to include both well water and geologist. Am I correct in that statement?

MR. KELLY: Yes, sir, basically that reclarified the National Groundwater Association Certification Program or a professional geologist.

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DR. MILLER: Okay.

MR. KELLY: That was what was in accordance with the Act and that's what we placed in the rules.

DR. MILLER: All right. Any questions by the Commission? Thank you very much.

MR. KELLY: Yes, sir.

DR. MILLER: I'll entertain --

MR. BROWN: Move to adopt the amendments.

DR. MILLER: Pardon?

MR. BROWN: Move to adopt the amendments as described by the Chair.

DR. MILLER: Any second?

MR. WALTERS: Second.

DR. MILLER: Any other questions? Then I'll call for the question. All in favor signify by saying aye.

COMMISSIONERS: Aye.

DR. MILLER: All opposed no. It sounds like that passed.

MR. KELLY: Thank you,

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Mr. Chairman.

DR. MILLER: Thank you. Agenda item nine is ADEM Administrative Code 335-3 Air Pollution Control Program Regulations. The Department promotes -- proposes to amend the ADEM Administrative Code Rules 335-3-5-.13, 335-3-8.14, and 335-3-8-.46. These revisions are proposed to incorporate changes to the trading rules of EPA's Cross State Air Pollution Rules to address the distribution of any excess allocations that remain after an existing unit has reached its historic emission cap. The changes as proposed also address allocations set aside from any new Nitrous Oxide Ozone Season units in Indian country within the state.

Would the Department please comment on that?

MR. GORE: Mr. Chair, ladies and gentlemen, I'm Ron Gore with the Department's Air Division and you described the plan changes really well. Basically three years ago we thought when we were handing out

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emission, allocations were basically pieces of pie to our electric utilities, that there would not be enough of the pie to go around. Given the changes that have happened to the electric generating industry in the form of more burning of gas, less burning of coal, there are excess pieces of pie to hand out and our Rules do not have any provisions for doing so. So we're asking you to give us the authority to hand out the excess emission allowances or pie if you want to call it that.

I'll be glad to answer any questions you might have.

DR. MILLER: Does anyone have a question?

MR. BROWN: Move to adopt the amendment as described.

MR. MASINGILL: Second.

DR. MILLER: Okay. Any further discussion? All right. Let's vote on the question. All in favor of the proposed amendment, please say I aye.

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COMMISSIONERS: Aye.
DR. MILLER: All opposed no. All right. Now we have another agenda item number 10, consideration of proposed amendments to ADEM Administrative Code 335-6, the Water Quality Program. I'll just call on the Department rather than reading this long sentence.
MR. COBB: I thought you were going to help me out.
DR. MILLER: I'll let you read it.
MR. COBB: Good morning Members of Commission and Chairman Miller. My name is Steven Cobb and I'm Chief of the ADEM Land Division. Included in the information you've been provided are proposed revisions to the Underground Storage Tank Regulations. The Department is proposing to amend Chapter 15 and Chapter 16 of Division 6 Volume 2 of the ADEM Administrative Code. The revisions to the Chapter 15 regulations are being proposed to extend the implementation date for certain of the new testing and equipment requirements

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of that program. The EPA provisions provide for state -- provide for state implementation of these requirements allowed for this extension and in fact several other of the Region 4 states have also taken these steps due to the difficulties which are being encountered by owners and operators and their efforts to comply with these new requirements.
The revisions to Chapter 16 regulations are also being proposed here in amendment to 335-6-16-.09 which establishes the scope of the Tank Trust Fund coverage is proposed and the scope of this trust fund coverage is being amended to provide for an increase to the current indemnification limit from 1.5 million to $1.75 million per occurrence. These proposed revisions were recommended by the Alabama Underground and Aboveground Storage Tank Trust Fund Management Board and proposed for adoption by the Commission.
The public comment period has

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been completed. The public hearing was held on September 5th, 2018. There were no comments received during the public comment period and I will be happy to answer any questions that you might have.
DR. MILLER: Any questions? Thank you. All right. I'll entertain a motion to adopt this proposed amendment.
DR. PERRY: So moved.
MR. BROWN: Second.
DR. MILLER: All right. Do we have any further discussion? If not the proposed amendment has been proposed and seconded. I'm calling for the question. All in favor say I aye.
COMMISSIONERS: Aye.
DR. MILLER: All opposed no. Our next item is a hearing officer report from the United States Steel Corporation versus ADEM. This, however, the petitioner has decided to withdraw this request. So no action will be needed on that.
Our next meeting at this point is

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scheduled to be December 14th, 2018. Does anybody have a conflict that they know of that we could try to rearrange that meeting? Hearing no answer, I think we will just continue on with our plan to meet on December 14th.
We have two people who have registered with the back-door approach here to make a three-minute presentation to the Commission this morning. We welcome them, Cindy Lowry and Mark Johnston. We'll start with Ms. Lowry.
MS. LOWRY: Thank you. I told DR. MILLER that my talk is three and a half minutes. I hope y'all are good with that. I'll talk as fast as I can.
The first thing I want to do is just welcome the new Commissioners and introduce myself and my organization. I'm the Executive Director of the Alabama Rivers Alliance, and Alabama Rivers Alliance is a statewide network of groups working together to advocate for sound water policy and its

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enforcement. We work together with many organizations across the states who care about our rivers and we interact with the Commission around issues that impact rivers and the lives of Alabamians.

Second I want to share my experience of how the environmental community interacts with both ADEM and the Commission to hopefully provide a better understanding of our approach and our intent when we come before you. The recent bribery trial brought to light activities that strengthen long-held perceptions that the Agency and the Commission are more closely aligned with the interest of the regulated industries than with the interest of protecting the environment and public health. Whether you agree or disagree with these perceptions, they exist, and the kind of actions that occurred in the North Birmingham case help validate them.

I recognize that there are also perceptions about environmental organizations such as that we are always trying to grab

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headlines and that we are always trying to make ADEM look bad. During the last EMC Rulemaking Committee, former Commissioner -- Committee Meeting, former Commissioner Richardson made a point to mention that environmental groups seldom took advantage of his open-door policy. He followed that statement by saying that a lot more can happen in a one-on-one meeting than in a public forum. I think his comments brought to light an important disconnect between the Commissions perception and our intent.

We believe in and understand the need for one-on-one conversations on occasion to further explain its use or to deepen a conversation. In fact, many of us have utilized this opportunity over the years with various Commissioners. However, we also believe that in an appointed body such as the EMC is accountable for all of the people of Alabama. Any information shared with you or any information used by you to make decisions should be done so in a transparent way that is

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equally accessed by anyone who is interested in accessing it.

Conversations that happen one on one, however well intentioned, are inherently not transparent. We at Alabama Rivers Alliance utilize this public forum at these meetings to share information that we believe is important for the Commission to have. We use the public forum so that everyone, all the Commissioners, agency personnel, industry representatives and the public can hear the information. When delivered and discussed in a public meeting, everyone hears the same information and there's less opportunity for bias and corruption to occur.

One-on-one meetings may sometimes be more effective but they are not equally accessed by everyone. Entities with more financial and human resources have a much greater ability to travel around the state, to participate in one-on-one meetings than we do as a very small organization with little time and money for each meetings. But even we have

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a greater access than a member of an impacted community. We supported adding this three-minute time slot during the meetings for that very reason. Members of the public need to be able to come before this Commission. We are grateful to the Commission for agreeing to this.

There are a few times that stand out to me, and I've been doing this for almost twenty years now. There are a few times that stand out to me when communication relationships between environmental organizations and the Commission have really worked well to try and solve problems. None of those have come easy and in each instance there was a need to use the public forum and the media to push for an issue to be addressed. But in those instances, such as when we worked to lower the cancer risk allowed into our waterways through changes in water quality standards, the success occurred when the Commission took the time to hear the concerns of the public and environmental

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groups and to lead a thoughtful process to study the issue before making a decision.

The process was led by the Commission and all interested parties were given a representative at the table alongside scientific expertise. I hope that moving forward you will understand that we use this public forum to ensure the kind of transparency and equal playing field that is needed to feel that our voices are heard. When this is achieved, I think you will find we can successfully solve problems and minimize conflict.

I look forward to working with all of you and thanks for letting me speak today.

DR. MILLER: Thank you. Mr. Johnston? Mark Johnston? Oh, there you are.

MR. JOHNSTON: How are you doing?

DR. MILLER: Very good.

MR. JOHNSTON: Good morning.

COMMISSIONERS: Good morning.

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DR. MILLER: I appreciate the opportunity to speak for a few minutes. I'm grateful to all of you for serving on the Commission.

My name is Mark Johnston. A little bit about me, I'm a retired priest in the Episcopal church. I live in Poplar Springs in Winston County. My wife Maggie and I live in a little clearing at the end of a mile long road. We have three children and -- excuse me, four children and three grandchildren. The three grandchildren are coming to see us this weekend. We have gardens and five dogs and chickens and we just live in paradise in the forest. We are very blessed people.

For a long time I have been active in the environmental movement and the public health movement because I believe there's a direct correlation in between the health of the environment and the health of people. I imagine if y'all are serving on the Commission, y'all believe the same sort of

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thing. This same sort of understanding that there's a direct correlation between the health of the people and the health of the environment is the cornerstone of the values of the Environmental Defense Alliance. I'm proud to be a board member of the Environmental Defense Alliance and have been on the board of the organization since its inception.

On September 27th, we sent the Commission a letter and some recommendations and I want to say that I hope you take -- took those in the spirit of collaboration and in the spirit of your Strategic Plan, your desire to have transparent communications, because to the extent possible, we would like to be -- as an organization to be collaborative and to do everything in our power to help you be the best you can be for the health of the environment and the health of the people in the State of Alabama.

Some of you are new and some of you here -- I started to say some of you in

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the congregation -- some of you -- I might be retired but it's still in my blood -- this is the letter. It's a short letter. Let me read it for you.

Dear Commissioners, in the wake of the testimony and convictions in the United States versus Gilbert, et al., public confidence in the Alabama Environmental Management Commission and the Alabama Department of Environmental Management has been severely shaken, perhaps irrevocably. Traumatic measures must be taken by the Commission if it hopes to restore public confidence. The Environmental Defense Alliance submits the attached recommendations for your consideration and action.

So we -- I think all of you -- I don't know if you've seen this or not. We sent four recommendations and each of them have three additional bullets at the bottom. Recommendation one is in the AEMC practice of conducting public business on private email, public business on private email. The second

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is to make the AEMC and ADEM's communications transparent, which is one of your goals in your Strategic Plan. Third is to make AEMC and ADEM communications with regulated parties or their representatives public. And finally, four, to reform AEMC and ADEM handling of requests to make public presentations. So there's some detail with this.

Commissioner Brown, you were the Commissioner when this was -- you were President of the Commission when this was sent out and the rest of you were here. I'm curious what actions have been taken since we sent out this letter? What actions do you intend to take?

MR. LEFLEUR: Mr. Chairman, I might mention that you all have had this for a total of about two weeks and have not met as a group since then and that the matters have been discussed among you individually and any action that would be required would be in the future.

MR. JOHNSTON: Yes, sir. Thank you

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so much for your time.

DR. MILLER: I would like to ask one question.

MR. JOHNSTON: Yes, sir.

DR. MILLER: I'm just not familiar with the Alabama, what is it, Environmental Defense Alliance. Who are the members of that?

MR. JOHNSTON: Well, there are four of us that are on the board. It's Kirsty Bryant and Eva Dillard and Mike Mullins and myself.

DR. MILLER: Okay. Are there any other members besides the board members?

MR. JOHNSTON: Yeah, we have some people that contribute. Thank you.

DR. MILLER: You're welcome. I think that was our last speaker for the day. I'll entertain a motion to adjourn.

MR. WALTERS: So moved.

DR. PERRY: Seconded.

DR. MILLER: All in favor say aye.

COMMISSIONERS: Aye.

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DR. MILLER: All opposed. All right. We are adjourned.

(The meeting concluded on October 19, 2018 at 11:53 a.m.)

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REPORTER'S CERTIFICATE

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Elaine Scott, Certified Court Reporter and Commissioner for the State of Alabama at Large, hereby certify that on October 19, 2018, I reported the meeting of the Alabama Environmental Management Commission, and that pages 1 through 48 contain a true and accurate transcription of the meeting set out herein.

I further certify that I am neither of kin nor of counsel to any of the parties to said cause nor in any manner interested in the results thereof.

_____

/s/Elaine Scott, CCR
ELAINE SCOTT, Court Reporter
and Commissioner for the State
of Alabama at Large
CCR NO. 354, Expires 9/30/19

MY COMMISSION EXPIRES NOVEMBER 16, 2019

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I, Elaine Scott, Certified Court Reporter and Commissioner for the State of Alabama at Large, hereby certify that on October 19, 2018, I reported the meeting of the Alabama Environmental Management Commission, and that pages 1 through 48 contain a true and accurate transcription of the meeting set out herein.

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Elaine Scott

/s/Elaine Scott, CCR
ELAINE SCOTT, Court Reporter
and Commissioner for the State
of Alabama at Large
CCR NO. 354, Expires 9/30/19

MY COMMISSION EXPIRES NOVEMBER 16, 2019

Part B

Attachment Index

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(Agenda Item 10)

Attachment 1

9/19/18

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: October 19, 2018
TIME: 11:00 a.m.
LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Conference Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

* The Agenda for this meeting will be available on the ADEM website, www.adem.alabama.gov, under Environmental Management Commission.

** The Minutes for this meeting will be available on the ADEM website under Environmental Management Commission.

1. CONSIDERATION OF MINUTES OF MEETING HELD ON AUGUST 17, 2018

2. ELECTIONS

The Commission will elect a Commission Chair and Vice Chair.

3. REPORT FROM THE ADEM DIRECTOR

4. REPORT AND POSSIBLE RECOMMENDATION FROM THE STRATEGIC PLANNING AD HOC COMMITTEE REGARDING ADOPTION OF THE DRAFT 2019 AEMC AND ADEM UNIFIED STRATEGIC PLAN BY THE COMMISSION

The Strategic Planning Ad Hoc Committee will provide its report and possibly present a recommendation regarding adoption of the Draft 2019 AEMC and ADEM Unified Strategic Plan by the Commission at the December 14, 2018 AEMC meeting.

5. REPORT FROM THE COMMISSION CHAIR

6. CONSIDERATION OF RESOLUTION FOR FORMER COMMISSIONER TERRY D. RICHARDSON, PH.D.

7. REPORT AND RECOMMENDATION FROM THE PERSONNEL COMMITTEE ON THE ADEM DIRECTOR JOB PERFORMANCE EVALUATION

The Personnel Committee will provide its report and present a recommendation on the ADEM Director Job Performance Evaluation to the Commission for consideration.

8. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-1, GENERAL ADMINISTRATION REGULATIONS (INCLUDES NPDES-RELATED MATTER)

The Commission will consider proposed amendments to ADEM Administrative Code 335-1, General Administration Regulations. Revisions to Division 1 Regulations are being proposed to amend ADEM Administrative Code Rules 335-1-1-.03 and 335-1-1-.07. Revisions to ADEM Administrative Code Rule 335-1-1-.03 would modify language as it related to the membership of the Commission in accordance with Act # 2018-454 (National Well Water Association position) and more accurately represent the location of the Commission records. Revisions to ADEM Administrative Code Rule 335-1-1-.07 would add, modify, and delete appropriate forms. The Department held a public hearing on the proposed amendments on August 8, 2018.

9. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-3, AIR POLLUTION CONTROL PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code 335-3, Air Pollution Control Program Regulations. The Department proposes to amend ADEM Administrative Code Rules 335-3-5-.13, 335-3-8-.14, and 335-3-8-.46. Revisions are proposed to Chapters 335-3-5 and 335-3-8 to incorporate changes to the trading rules to EPA's Cross State Air Pollution Rules (CSAPR) to address distribution of any excess allocations that remain after an existing unit has reached its historic emission cap. Also, changes are proposed to address allocation set-asides for any new NO_x Ozone Season units in Indian country within the State.

Chapters 335-3-5, and 8, are considered part of the federally-enforceable State Implementation Plan (SIP). Revisions to these Chapters are proposed to be incorporated into Alabama's SIP.

The Department held a public hearing on the proposed amendments on August 10, 2018.

10. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-6, WATER QUALITY PROGRAM – UNDERGROUND STORAGE TANK REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code 335-6, Water Quality Program – Underground Storage Tank Regulations. Revisions to Volume II of the Division 6 Code are being proposed to implement changes to the Chapter 15 regulations to extend the implementation date for certain new testing and equipment requirements. Revisions to the Chapter 16 regulations are proposed to increase the Trust Fund scope of coverage as recommended by the Alabama Underground and Aboveground Storage Tank Trust Fund Management Board in accordance with the Alabama Underground and Aboveground Storage Tank Trust Fund Act. The Department held a public hearing on the proposed amendments on September 5, 2018.

11. UNITED STATES STEEL CORPORATION V. ADEM, AND BEAZER EAST, INC., INTERVENOR, EMC DOCKET NO. 16-03

The Commission will acknowledge for the record Petitioner United States Steel Corporation's withdrawal of the request for hearing in this matter.

12. OTHER BUSINESS

13. FUTURE BUSINESS SESSION

PUBLIC COMMENT PERIOD

BRIEF STATEMENTS BY MEMBERS OF THE PUBLIC REGISTERED TO SPEAK

Members of the public that wish to make a brief statement at a Commission meeting may do so by first signing in on a register maintained by the Commission office prior to each regularly scheduled meeting. The register will close ten minutes prior to convening each each meeting of the Commission. Following completion of all agenda items, the Commission Chair will call on members of the public wishing to make a statement in the order their names appear on the register. Speakers are encouraged to limit their statement to matters that directly relate to the Commission's functions. Speakers will be asked to observe a three minute time limit. While an effort will be made to hear all members of the public signed on the register, the Commission may place reasonable limitations on the number of speakers to be heard. (Guideline 11, Guidelines for Public Comment).

The Guidelines for Public Comment are used in the application of ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda and Public Participation. The Guidelines for Public Comment serve to educate and inform the public as to how the Commission interprets and intends to apply the Rule. The revised Rule 335-2-3-.05 was effective October 7, 2016.

Attachment 2

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MOTION

Accept Sam Miller as Chair and

Lanier Brown as Vice Chair

ORDER

This cause having come before the Environmental Management Commission pursuant to the above motion, and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the above motion is hereby adopted; and

2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below.

ISSUED this 19th day of October 2018.

APPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 19th day of October 2018.

Samuel L. Miller, Chair
Environmental Management Commission
Certified this 19th day of October 2018

Attachment 3

ADEM Alabama Department of Environmental Management

Strategic Plan Foundational Elements

1. Mission, Values, Operating Guidelines
2. Roles of the Commission and Department
3. Vision for Achieving Environmental Results

ADEM Alabama Department of Environmental Management

1. Mission, Values, Operating Guidelines

✓Assure for all citizens of the state a safe, healthful and productive environment

Alabama Department of Environmental Management

1. Mission, Values, Operating Guidelines

- ✓Science-based decisions and policies
- ✓Mutually respecting differing roles of Commission and Department
- ✓Transparent communication
- ✓Using resources wisely
- ✓Acting on agreed upon goals

Alabama Department of Environmental Management

2. Roles of the Commission and Department

- ✓Commission and Department differing roles.
- ✓Commission sets environmental policy:
  - – Promulgating rules
  - – Hearing appeals of administrative actions
  - – Managing the Director of the Department

ADEM **Alabama Department of Environmental Management**

2. Roles of the Commission and Department

- ✓Commission and Department differing roles
- ✓Commission sets environmental policy
- ✓Department implements policy:
  - Managing permitting,
  - Compliance determinations
  - Enforcement actions

ADEM **Alabama Department of Environmental Management**

2. Roles of the Commission and Department

- ✓Commission and Department differing roles
- ✓Commission sets environmental policy
- ✓Department implements policy
- ✓Department provides timely quality information to help Commission set policy

ADEM Alabama Department of Environmental Management

3. Vision for Achieving Environmental Results

- ✓Air media: attaining federal ambient air quality standards
- ✓Land media: safely manage solid & hazard waste, cleanup contamination, recycle
- ✓Water media: attain water quality standards, use classifications, control storm water

ADEM Alabama Department of Environmental Management

Strategic Plan Foundational Elements

1. Mission, Values, Operating Guidelines
2. Roles of the Commission and Department
3. Vision for Achieving Environmental Results

Alabama Department of Environmental Management

Shared AEMC / ADEM Plan Goals

A. Effective and Responsive Commission

B. High Performing Work Environment

C. Credible Relationships with External Stakeholders

D. Efficient and Effective Departmental Operations

Alabama Department of Environmental Management

Strategies for Achieving Shared Plan Goals

- Effective Commission / Department Communication
- Effectively Address Emerging Issues, New Regulations, and Public Interaction
- Robust Departmental Support for the Commission
- Departmental Focus on Goals
- Maintaining High Quality Departmental Operations
- Taking all necessary steps to assure high levels of regulated industry compliance

ADEM Alabama Department of Environmental Management

EPA 2018-2022 Strategic Plan Goals

A. Core mission of clean air, land and water and ensure chemical safety

B. Rebalance the power between Washington and the states to achieve results

C. Administer the law as Congress intended

Attachment 4

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MOTION

Consider the Strategic Planning Ad Hoc Committee's recommendation and adoption of the Draft 2019 AEMC and ADEM Unified Strategic Plan at the December 14, 2018 AEMC meeting

ORDER

This cause having come before the Environmental Management Commission pursuant to the above motion, and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the above motion is hereby adopted; and

2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below.

ISSUED this 19th day of October 2018.

APPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 19th day of October 2018.

Samuel L. Miller, Chair
Environmental Management Commission
Certified this 19th day of October 2018

Attachment 5

State of Alabama

RESOLUTION

WHEREAS, Terry D. Richardson, Ph.D. served as a member of the Alabama Environmental Management Commission in the Biologist/Ecologist position from June 2010 until September 2018; and

WHEREAS, he provided experience, wisdom, and foresight in the Commission's deliberations on significant issues; and

WHEREAS, his leadership abilities were recognized by his election as Vice Chair of the Commission, a position he held from June 2017 to September 2018; and

WHEREAS, during his tenure on the Commission, he also served as a Member and Chair of the Rulemaking Committee and Chair of the Strategic Planning Ad Hoc Committee; and

WHEREAS, his steadfast dedication to his service on the Commission will be greatly missed by his fellow Commissioners, the Commission's legal counsel and assistant, leadership and staff of the Alabama Department of Environmental Management, and many within the governmental, regulated, and environmental communities; now

THEREFORE, be it resolved that the Alabama Environmental Management Commission expresses gratitude to TERRY D. RICHARDSON, PH.D. for his significant contribution to a better environment and an improved quality of life for the citizens of Alabama.

DONE this 19th day of October 2018.

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 19th day of October 2018.

Samuel L. Miller, Chair
Environmental Management Commission

Attachment 6

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MOTION

Adopt the recommendation of the Personnel Committee

ORDER

This cause having come before the Environmental Management Commission pursuant to the above motion, and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the above motion is hereby adopted; and

2. That pursuant to the adoption of the recommendation of the Personnel Committee, the Personnel Committee Chair is authorized to meet with Director LeFleur regarding the Summary of Written Comments on ADEM Director Job Performance Evaluation and to execute the verification of understanding between the Commission and the Director regarding the evaluation; and

3. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below.

ISSUED this 19th day of October 2018.

APPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 19th day of October 2018.

Samuel L. Miller, Chair
Environmental Management Commission
Certified this 19th day of October 2018

Attachment 7

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-1 of the Department's Administrative Division – General Administration Rules in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

WHEREAS, a public hearing was held before a representative of the Alabama Department of Environmental Management designated by the Environmental Management Commission for the purpose of receiving data, views and arguments on the amendment of such proposed rules; and

WHEREAS, the Alabama Department of Environmental Management did not receive any written or oral comments at the public hearing or during the public comment period.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-1 [rules 335-1-1-.03/Organization and Duties of the Commission (Amend); 335-1-1-.07/Departmental Forms, Instructions, and Procedures (Amend)]; of the Department's Administrative Division – General Administration rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

ADEM Admin. Code division 335-1 – General Administration

IN WITNESS WHEREOF, we have affixed our signatures below on this 19th day of October 2018.

APPROVED:

DISAPPROVED:

ABSTAINED:

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 19th day of October 2018.

Samuel L. Miller, Chair
Environmental Management Commission
Certified this 19th day of October 2018

335-1-1-.03 Organization and Duties of the Commission.

(1) The Commission is a statutorily-created seven member commission with the following duties:

(a) To select a Director for the Department of Environmental Management and to advise the Director on environmental matters which are within the Department's scope of authority;

(b) To establish, adopt, promulgate, modify, repeal and suspend any rules, regulations, or environmental standards for the Department which may be applicable to the state as a whole or any of its geographical parts;

(c) To develop environmental policy for the state; and

(d) To hear and determine appeals of administrative actions.

(2) The members of the Commission are appointed for six-year terms by the Governor with the advice and consent of the senate. Position qualifications are as follows:

(a) a physician licensed to practice medicine in the State of Alabama who shall be familiar with environmental matters;

(b) a professional engineer registered in the State of Alabama who shall be familiar with environmental matters;

(c) an attorney licensed to practice law in the State of Alabama who shall be familiar with environmental matters;

(d) a chemist possessing as a minimum a bachelor's degree from an accredited university, or a veterinarian licensed to practice veterinary medicine in the State of Alabama, who shall be familiar with environmental matters;

(e) an individual certified by the National Ground Water Association Certification Program or is a professional geologist;

(f) a biologist or an ecologist possessing as a minimum a bachelor's degree from an accredited university with training in environmental matters;

(g) a resident of the state for at least two years; and

(h) members shall meet all requirements of the state ethics law and the conflict of interest provisions of applicable federal laws and regulations.

(3) The Commission meets regularly, at least once every two months, and keeps a complete and accurate record of the proceedings of its meetings, a copy of which is located on the Department's website (www.adem.alabama.gov) under the Environmental Management Commission tab and is open to public inspection.

(4) Beginning with Fiscal Year 2009 as needed for the effective execution of

statutory mandates, and at least every fifth year after the last notice as outlined herein, and in accordance with all applicable statutes and regulations, the Director shall deliver to the Commission a notice of intent to update the Unified Strategic Plan under which the Commission and Department operate. The notice shall contain the Department's summary of departmental goals, timeline for plan development, and a brief explanation of methodology for updating the Unified Strategic Plan. Any and all updates to the Unified Strategic Plan shall be completed within one year of the Director's notice.

(5) Upon receipt of the notice delivered according to paragraph (4) of this rule, the Commission shall appoint a special ad hoc committee to oversee the Department's development and implementation of the planning process.

(6) Any final Unified Strategic Plan produced according to this process shall be approved by the Commission.

Author: Marilyn Elliott; John P. Hagood; Brian C. Espy.
Statutory Authority: Code of Alabama. 1975, §§22-22A-5, 22-22A-6, 22-22A- 8, 41-22-4, 41-22-5.
History: Effective: August 1, 1988. **Amended:** Effective: May 26, 2009. **Amended:** Effective: December 8, 2017. **Amended:** Filed: October 23, 2018; Effective: December 7, 2018.

335-1-1-.07 Departmental Forms, Instructions, and Procedures.

(1) Designation as the State Environmental Control Agency. The Department is the State Environmental Control Agency for the purposes of federal environmental law including the Federal Clean Air Act, 42 U.S.C. 7401 et seq., as amended; the Federal Clean Water Act, 33 U.S.C. 1251 et seq., as amended; the Federal Safe Drinking Water Act, 42 U.S.C. A 201 et seq., as amended. The Department is authorized to take all actions necessary and appropriate to secure the benefits of federal environmental laws. The Department operates in conformity with such federal laws, policies, and procedures, as provided in the Act.

(2) Policies and Procedures. The Commission, through the adoption of rules pursuant to Code of Alabama 1975, § 22-22A-7(c)(6), establishes environmental policies and procedures.

(3) Form and Instructions. The Director may require such forms within the rules as he deems necessary. The content of such forms and instructions for their completion may be prescribed by the Director including the changes of such from time to time. Federal forms as published by the Environmental Protection Agency may be used in lieu of state developed forms. Departmental forms prescribed by the Director shall be identified and numbered as follows:

Name of Forms	Form Number
112(j) Part 1 Applicability Notification	**493**
ADEM Baseline Monitoring Report Submittal Form	**314**
ADEM NPDES Pesticide Adverse Incident Report	**29**
Air Emissions Electronic Reporting System (AEERS) Responsible Official Registration	**38**
Air Permit Application For Gasoline Dispensing Facilities **M-5**	**197**
Alabama Clean Vessel Act Grant Application	**517**
Alabama Coastal Area Management Program Application for Approval of a Non-Regulated Use ADEM Administrative Code rule 335-8-1-.11 Groundwater Extraction 50 PM or Greater **M-1**	**316**
Alabama Hazardous Waste Receipt for Samples and Documents	**546**
Alabama Hazardous Waste/Used Oil Transporter Permit Application **M-1**	**317**
Alabama Recycling Fund Grant Application	**9**
Alabama Tank Trust Fund Cost Proposal Form **M-2**	**31**
Alabama Tank Trust Fund Payment Request Form **M-2**	**32**
Alternative Analysis	**311**
Alternative Medical Waste Treatment Technology Equipment Approval Application	**323**
NPDES Annual Petroleum Certification **M-2**	**324**
Annual Recycling Report	**16**
Application for a Permit for the Construction for a Motel, Hotel, or Other Multi-Unit Development on a Property Intersected by the Construction Control Line in the Alabama Coastal Area **M-2**	**327**

Name of Forms	Form Number
Application for a Permit for the Construction of Single Family Dwellings, Duplexes, or Other Similar Structures on Properties Intersected by the Construction Control Line in the Alabama Coastal Area **M-2**	**328**
Application for Alabama Well Driller's License **M-1**	**193**
Application for Approval of a Non-Regulated Use in the Alabama Coastal Area Developments and Subdivisions of Property Greater than 5 Acres in Size **M-1**	**329**
Application for Name Change or Transfer of Permit or Exemption **M-4**	**330**
Asbestos Removal Contractor Certification	**497**
Birmingham Fuel Supplier Report **M-1**	**494**
Boating Infrastructure Grant Application	**518**
Brownfields Assessment Request Application	**550**
Brownfields State Revolving Fund Application Form	**543**
Brownfields State Revolving Fund Pre-Application Form	**542**
Bulk (Gasoline) Plant Application **M-2**	**331**
CAIR Permit Application (for sources covered under a CAIR SIP)	**519**
Calculation of Total Annualized Project Cost for Private-Sector Projects	**313**
Calculation of Total Annualized Project Cost for Public-Sector Projects	**312**
Cargo Tank Tightness Test Report **M-1**	**309**
Cathodic Protection Monitoring for Galvanic Systems	**545**
Cathodic Protection Monitoring Form **M-1**	**332**
Chemical Sampling Chain of Custody Form	**337**
Clean Water State Revolving Fund (CWSRF) Loan Application Form **M-2**	**339**
Clean Water State Revolving Fund (CWSRF) Preapplication Form **M-3**	**340**
Coalbed Methane Stormwater Inspection Summary Report **M-1**	**343**
Coalbed Methane Temporary Pit Wastewater Land Application Certification Report **M-1**	**344**
Composting Facility Application	**18**
Cooling Water Supplemental Information **M-2**	**510**
Deactivation Request Form for e-DMR/e-SSO **M-1**	**513**
Disposal Approval Request **M-1**	**278**
Documentation of Disability Related Needs	**533**
Drinking Water State Revolving Fund (DWSRF) Loan Application Form **M-2**	**369**
Drinking Water State Revolving Fund (DWSRF) Preapplication Form **M-3**	**370**
Drinking Water - Application for Approval to Use a Water Supply Well	**259**
Drinking Water - Chemical Monitoring Data Report **M-1**	**335**
Drinking Water - Chemical Monitoring Waiver Application **M-1**	**336**
Drinking Water - Community Public Notification Certification Form	**345**
Drinking Water - Community System Susceptibility Analysis Sheet **M-1**	**346**

Name of Forms	Form Number
Drinking Water - Construction Permit Application **M-2**	**488**
Drinking Water – Construction Project Update **M-1**	**443**
Drinking Water - Consumer Confidence Report Certification Form **M-1**	**347**
Drinking Water - Filter Plant Monthly Operational Data Report **M-5**	**242**
Drinking Water – Giardia and Virus Profile Spreadsheet **M-1**	**535**
Drinking Water - Groundwater System Monthly Operational Data Report **M-1**	**8**
Drinking Water - Laboratory Certification Application **M-3**	**442**
Drinking Water - Lead and Copper Monitoring Data Report **M-1**	**405**
Drinking Water - Maximum Residual Disinfectant Level Input Form (Samples) **M-1**	**408**
Drinking Water - Modification Permit Application	**489**
Drinking Water - Monthly Membrane Surface Plant Operational Data Report **M-1**	**243**
Drinking Water - Non-Community Public Notification Certification Form	**420**
Drinking Water – Notification of Intent to Drill a Water Well	**60**
Drinking Water - Operational Evaluation Level Exceedance Report **M-2**	**27**
Drinking Water - Project Completion Form **M-2**	**444**
Drinking Water – Public Water System Information Update **M-1**	**491**
Drinking Water - Purchase Water System Monthly Operation Report **M-1**	**185**
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Attachment 8

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-3 of the Department's Air Division – Air Pollution Control Program Rules in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

WHEREAS, a public hearing was held before a representative of the Alabama Department of Environmental Management designated by the Environmental Management Commission for the purpose of receiving data, views and arguments on the amendment of such proposed rules; and

WHEREAS, the Alabama Department of Environmental Management has reviewed the oral and written submissions introduced into the hearing record, and has prepared a concise statement of the principal reasons for and against the adoption of the proposed rules incorporating therein its reasons for the adoption of certain revisions to the proposed rules in response to oral and written submissions, such revisions, where appropriate, having been incorporated into the proposed rules attached hereto; and

WHEREAS, the Environmental Management Commission has considered fully all oral and written submissions respecting the proposed amendments and the Reconciliation Statement prepared by the Alabama Department of Environmental Management.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-27-2, 22-27-7, 22-27-9, 22-27-12 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-3 [335-3-5-.13/TR SO2 Allowance Allocations (Amend); 335-3-8-.14/TR NOx Annual Allowance Allocations (Amend); 335-3-8-.46/TR NOx Ozone Season Group 2 Allowance Allocatons (Amend);] of the Department's Air Division – Air Pollution Control Program Rules,

administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

ADEM Admin. Code division 335-3 – Air Pollution Control Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 19th day of October 2018.

APPROVED:

DISAPPROVED:

ABSTAINED:

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 19th day of October 2018.

Samuel L. Miller, Chair
Environmental Management Commission

335-3-5-.13 TR SO_2 Allowance Allocations.

(1) State SO_2 Group 2 Trading Program Budget. The State trading budget for annual allocations of Transport Rule (TR) SO_2 Group 2 allowances for the control periods 2017 and thereafter is 213,258 tons.

(2) Timing Requirements for SO_2 Group 2 Allowance Allocations.

(a) By June 1, 2016, the Department will submit to the Administrator, in a format prescribed by the Administrator, the SO_2 Group 2 allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in 2017 and 2018.

(b) By June 1, 2017, the Department will submit to the Administrator, in a format prescribed by the Administrator, the SO_2 Group 2 allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in 2019 and 2020.

(c) By June 1, 2018, the Department will submit to the Administrator, in a format prescribed by the Administrator, the SO_2 Group 2 allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in 2021 and 2022.

(d) By June 1, 2019, and every other year thereafter, the Department shall submit to the Administrator, in a format prescribed by the Administrator, the SO_2 Group 2 allocations, in accordance with paragraph (3) of this rule, for the control periods in the two years that are four and five years after the year of the applicable deadline for submission under this paragraph.

(3) SO_2 Group 2 Allowance Allocations.

apply:

(a) Definitions. For the purpose of this rule, the following definitions

1. Baseline TR SO_2 Group 2 Unit. A TR SO_2 Group 2 unit that either:

(i) Commenced operation on or before January 1, 2014; or

(ii) Submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before January 1, 2014.

2. New TR SO_2 Group 2 Unit. A TR SO_2 Group 2 unit that does not meet the definition of a Baseline SO_2 Group 2 unit as defined in subparagraph (3)(a)1. of this paragraph.

(b) Determination of Heat Input.

1. The heat input (in mmBtu) used for calculating TR SO_2 Group 2 allowance allocations under subparagraph (2)(a) of this rule that are to be submitted to the Administrator by June 1, 2016 will be:

(i) For a Baseline SO_2 Group 2 unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated, in 2010, 2011, 2012, 2013, and 2014; or

(ii) For a Baseline TR SO_2 Group 2 unit that did not commence operation on or before January 1, 2014 but had submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before January 1, 2014, the expected actual annual heat input based on actual utilization data of similar sources.

(iii) For a New SO_2 Group 2 unit, the expected actual SO_2 heat input based on actual utilization data of similar sources.

2. The heat input (in mmBtu) used for calculating TR SO_2 Group 2 allowance allocations under subparagraph (2)(b) of this rule that are to be submitted to the Administrator by June 1, 2017 will be:

(i) For a Baseline TR SO_2 Group 2 unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated, in 2011, 2012, 2013, 2014, and 2015; or

(ii) For a Baseline TR SO_2 Group 2 unit that did not commence operation on or before January 1, 2015 but had submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before January 1, 2014, the expected actual annual heat input based on actual utilization data of similar sources.

(iii) For a New TR SO_2 Group 2 unit that commenced operation on or before January 1, 2015, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated in 2014 and 2015.

(iv) For a New TR SO_2 Group 2 unit that did not commence operation on or before January 1, 2015, the expected actual SO_2 heat input based on actual utilization data of similar sources.

3. The heat input (in mmBtu) used for calculating TR SO_2 Group 2 allowance allocations under subparagraph (2)(c) of this rule that are to be submitted to the Administrator by June 1, 2018 will be:

(i) For a Baseline TR SO_2 Group 2 unit, the average of the three (or less, if

applicable) highest amounts of the unit's heat input, in which the unit operated in 2012, 2013, 2014, 2015, and 2016.

(ii) For a New TR SO_2 Group 2 unit that commenced operation on or before January 1 2016, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control period in which the unit operated in 2014, 2015, and 2016.

(iii) For a New TR SO_2 Group 2 unit that did not commence operation on or before January 1, 2016, the expected actual annual heat input based on actual utilization data of similar sources.

4. The heat input (in mmBtu) used for calculating TR SO_2 Group 2 allowance allocations under subparagraph (2)(d) of this rule that are to be submitted to the Administrator by June 1, 2019, and all subsequent allocation years will be:

(i) For a Baseline TR SO_2 Group 2 unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input, for the control periods in which the unit operated for the five most recent control periods available prior to the deadline submission year.

(ii) For a New TR SO_2 Group 2 unit that commenced operation prior to January 1 of the most recent control period available prior to the submission year, the average of the three (or less, if applicable) highest amounts of the unit's heat input, for the control periods in which the unit operated, for the five most recent control periods available prior to the submission year; or

(iii) For a New SO_2 Group 2 unit that did not commence operation prior to January 1 of the most recent control period available prior to the submission year, the expected actual annual heat input based on actual utilization data of similar sources.

5. The unit's total heat input for the control period in each year specified under subparagraph (b) of this paragraph will be determined in accordance with 40 CFR 75 if the TR SO_2 Group 2 unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the Administrator and the Department for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75 for the year.

(c) Establishment of Baseline and Retired Unit Allowance Pools. At the time Transport Rule (TR) SO_2 Group 2 allowances are initially allocated to baseline TR SO_2 Group 2 units under subparagraph (2)(a) of this rule, each unit's allocation will be permanently recorded as that unit's "Baseline Allowance". This value will be used to calculate the following:

1. Baseline Allowance Pool. The Baseline Allowance Pool shall be calculated each time TR SO_2 Group 2 allowances are allocated under paragraph (2) of this rule and shall equal the State SO_2 Group 2 Trading Program Budget minus the total of the Baseline Allowances for all baseline TR SO_2 Group 2 units that have retired in accordance with 335-3-5-.08.

2. Retired Unit Allowance Pool. The Retired Unit Allowance Pool shall be calculated each time TR SO_2 Group 2 allowances are allocated under paragraph (2) of this rule and shall equal the sum of the Baseline Allowances for all TR SO_2 Group 2 units that have retired in accordance with 335-3-5-.08.

(d) Maximum Historic Emission Cap. The maximum historic emission cap is identified by using an 8 year historic emission period for each TR SO_2 Group 2 unit. The last year of the 8 year period will be the same year as the last year used for determination of heat input under paragraph (3)(b) of this rule. The maximum historic emission cap is the maximum SO_2 emissions (in tons) that occurred during any control period during the 8 year historic emission period. Data used for this purpose shall be obtained from the EPA Clean Air Markets Division (CAMD). An additional emission cap may be applied if a TR SO_2 Group 2 unit has an enforcement action or permit limit in place. The 8 year historic emission values will update every two years to coincide with the allocation control period.

(e) Calculation of TR SO_2 Group 2 Allowances for Baseline TR SO_2 Group 2 Units.

1. For each control period under subparagraph (2) of this rule, the Department will allocate TR SO_2 Group 2 allowances from the Baseline Allowance Pool to all baseline TR SO_2 Group 2 units in accordance with the following procedures:

(i) The Department will allocate TR SO_2 Group 2 allowances to each TR SO_2 Group 2 unit under 335-3-5-.07(1)(a) in an amount equaling the unit's share of the State's total 3 year average of heat input determined in accordance with subparagraph (b) of this paragraph, multiplied by the baseline allowance pool. If a TR SO_2 Group 2 unit has an initial historic heat input based allocation that exceeds its maximum historic emission cap as defined in subparagraph (3)(e) of this rule, then its allocation will equal the maximum historic emission cap for that TR SO_2 Group 2 unit.

(ii) Allocations remaining after the application of the maximum historic emission cap are reapportioned on the same basis to baseline TR SO_2 Group 2 units whose historic heat input based allocation does not exceed its maximum historic emission cap, if applicable. These steps are repeated until the entire Baseline Allocation Pool is allocated. The resulting TR SO_2 Group 2 allocation value is rounded to the nearest whole ton.

(f) Calculation of SO_2 Allowances for New TR SO_2 Group 2 Units. For each control period under paragraph (2) of this rule, after calculating SO_2 allowances for all baseline TR SO_2 Group 2 units that have not retired in accordance with 335-3-5-.08, the Department will allocate SO_2 allowances in the Retired Unit Allowance Pool to all new SO_2 Group 2 season units, in accordance with the following procedures:

1. For each new TR SO_2 Group 2 unit under 335-3-5-.07(1)(a), that commenced operation or submitted a permit application affirmatively deemed complete by the Department in writing on or before March 1 of the year allocations are to be submitted to the Administrator under paragraph (2) of this rule, the number of TR SO_2 Group 2 allowances allocated for each applicable control period will be equal to the unit's share of the State's total 3 year average of heat input for all new TR SO_2 Group 2 units, determined in accordance with subparagraph (b) of this paragraph multiplied by the Retired Unit Allowance Pool. If a new TR SO_2 Group 2 unit has an initial historic heat input based allocation that exceeds its maximum historic emission cap as defined in subparagraph (3)(e) of this rule, then its allocation equals the maximum historic emission cap for that TR SO_2 Group 2 unit .

2. Allocations remaining after application of the maximum historic emission cap are reapportioned on the same basis to new TR SO_2 Group 2 units whose historic heat input based allocation does not exceed its maximum historic emission cap, if applicable. These steps are repeated until the entire Retired Unit Allowance Pool is allocated or until all new units receive allocations equal to its maximum historic emission cap. The resulting TR SO_2 Group 2 allocation value is rounded to the nearest whole ton.

(g) Adjustment of Baseline SO_2 Allowance Allocations. If TR SO_2 Group 2 allowances remain in the Retired Unit Allowance Pool after allocations are made to all new TR SO_2 Group 2 units in accordance with subparagraph (f) of this paragraph, these SO_2 allowances will be allocated on a pro rata basis to the baseline TR SO_2 Group 2 units where historic heat input based allocation does not exceed its maximum historic emission cap, for the applicable control periods.

(h) SO_2 allowances allocated to baseline TR SO_2 Group 2 units based on heat inputs determined in accordance with subparagraph (b)1.(ii) or (b)2.(ii) of this paragraph will be held in the State's general account until the unit commences operation, prior to or during the control period for which SO_2 allowances were allocated. If the unit does not commence operations, the SO_2 allowances will be transferred by the Department pro rata to Baseline TR SO_2 Group 2 units that were allocated SO_2 allowances in accordance with subparagraphs (b)1.(i) or (b)2.(i) of this paragraph, and whose historic heat input based allocation does not exceed its maximum historic emission cap if applicable. By January 30 of the following year, the Department shall notify the Administrator of the appropriate SO_2 allowance transfers.

1. SO_2 allowances allocated to new TR SO_2 Group 2 units based on heat inputs determined in accordance with subparagraphs (b)1.(iii), (b)2.(iv), (b)3.(iii), or (b)4.(iii) of this paragraph will be held in the State's general account until the unit commences operation, prior to or during the control period for which SO_2 allowances were allocated. If the unit does not commence operations, the SO_2 allowances will be transferred by the Department pro rata to Baseline TR SO_2 Group 2 units that were allocated SO_2 allowances in accordance with subparagraphs (b)1.(i) and (ii), (b)2.(i) and (ii), (b)3.(i), or (b)4.(i) of this paragraph, and whose historic heat input based allocation does not exceed its maximum historic emission cap if applicable. By January 30 of the following year, the Department shall notify the Administrator of the appropriate SO_2 allowance transfers.

2. SO_2 allowances will not be allocated to TR SO_2 Group 2 units that retire under 335-3-5-.08 prior to the date SO_2 allowance allocations are submitted to the Administrator under subparagraphs (2)(a), (b), (c), or (d) of this Rule.

3. The total SO_2 Group 2 allowances allocated for any control period in accordance with subparagraphs (3)(f), and (g) of this paragraph shall not exceed the State SO_2 Group 2 Trading Program Budget as determined by the applicable, approved State Implementation Plan.

(i) Distribution of remaining TR SO_2 Group 2 Allowances. If any TR SO_2 Group 2 allowances remain after allocations are completed in subparagraphs (e) through (h) of this paragraph, the remaining allowances shall be distributed proportional to the allocations made in subparagraphs (e) through (h) of this paragraph beyond the unit's historical emissions cap. However, no unit may receive additional allocations that exceed any enforcement cap or permit limitation.

(j) Units Incorrectly Allocated TR SO_2 Group 2 Allowances. The procedures for addressing units that were incorrectly allocated TR SO_2 Group 2 allowances are incorporated by reference as they exist in 40 CFR §97.711(c), Subpart DDDDD as of July 1, 2015. (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

Author: Ronald W. Gore.
Statutory Authority: Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.
History: Effective Date: November 24, 2015. **Amended:** Filed: October 23, 2018; Effective: December 7, 2018.

335-3-8-.14 TR NO_x Annual Allowance Allocations.

(1) State Annual Trading Program Budget. The State trading budget for annual allocations of Transport Rule (TR) NOx Annual allowances for the control periods 2017 and thereafter is 71,962 tons.

(2) Timing Requirements for NOx Allowance Allocations.

(a) By June 1, 2016, the Department will submit to the Administrator, in a format prescribed by the Administrator, the annual NOx allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in 2017 and 2018.

(b) By June 1, 2017, the Department will submit to the Administrator, in a format prescribed by the Administrator, the annual NOx allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in 2019 and 2020.

(c) By June 1, 2018, the Department will submit to the Administrator, in a format prescribed by the Administrator, the annual NOx allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in 2021 and 2022.

(d) By June 1, 2019, and every other year thereafter, the Department shall submit to the Administrator, in a format prescribed by the Administrator, the annual NOx allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in the two years that are four and five years after the year of the applicable deadline for submission under this paragraph.

(3) NOx Allowance Allocations.

apply:

Definitions. For the purpose of this rule, the following definitions

1. Baseline TR NOx Unit. A TR NOx unit that either:

(i) Commenced operation on or before January 1, 2014; or

(ii) Submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before January 1, 2014.

2. New TR NOx Unit. A TR NOx unit that does not meet the definition of a Baseline TR NOx Unit as defined in subparagraph (3)(a)1. of this paragraph.

(b) Determination of Heat Input.

1. The heat input (in mmBtu) used for calculating TR NOx allowance allocations under subparagraph (2)(a) of this rule that are to be submitted to the Administrator by June 1, 2016 will be:

(i) For a Baseline TR NOx unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated, in 2010, 2011, 2012, 2013, and 2014; or

(ii) For a Baseline TR NOx unit that did not commence operation on or before January 1, 2014, but had submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before January 1, 2014, the expected actual annual heat input based on actual utilization data of similar sources.

(iii) For a New TR NOx unit, the expected actual annual heat input based on actual utilization data of similar sources.

2. The heat input (in mmBtu) used for calculating TR NOx allowance allocations under subparagraph (2)(b) of this rule that are to be submitted to the Administrator by June 1, 2017 will be:

(i) For a Baseline TR NOx unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated, in 2011, 2012, 2013, 2014, and 2015; or

(ii) For a Baseline TR NOx unit that did not commence operation on or before January 1, 2015, but had submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before January 1, 2014, the expected actual annual heat input based on actual utilization data of similar sources.

(iii) For a New TR NOx unit that commenced operation on or before January 1, 2015, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated in 2014 and 2015.

(iv) For a New TR NOx unit that did not commence operation on or before January 1, 2015, the expected actual annual heat input based on actual utilization data of similar sources.

3. The heat input (in mmBtu) used for calculating TR NOx allowance allocations under subparagraph (2)(c) of this rule that are to be submitted to the Administrator by June 1, 2018 will be:

(i) For a Baseline TR NOx unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated in 2012, 2013, 2014, 2015, and 2016.

(ii) For a New TR NOx unit that commenced operation on or before January 1 2016, the average of the three (or less, if applicable) highest amounts of

the unit's heat input, in which the unit operated in 2014, 2015, and 2016.

(iii) For a New TR NOx unit that did not commence operation on or before January 1, 2016, the expected actual annual heat input based on actual utilization data of similar sources.

4. The heat input (in mmBtu) used for calculating TR NOx allowance allocations under subparagraph (2)(d) of this rule that are to be submitted to the Administrator by June 1, 2019, and all subsequent allocation years will be:

(i) For a Baseline TR NOx unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input, in which the unit operated for the five most recent control periods available prior to the deadline submission year.

(ii) For a New TR NOx unit that commenced operation prior to January 1 of the most recent control period available prior to the submission year, the average of the three (or less, if applicable) highest amounts of the unit's heat input, in which the unit operated, for the five most recent control periods available prior to the submission year; or

(iii) For a New TR NOx unit that did not commence operation prior to January 1 of the most recent control period available prior to the submission year, the expected actual annual heat input based on actual utilization data of similar sources.

5. The unit's total heat input for the control period in each year specified under subparagraph (b) of this paragraph will be determined in accordance with 40 CFR 75 if the TR NOx unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the Administrator and the Department for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75 for the year.

(c) Establishment of Baseline and Retired Unit Allowance Pools. At the time Transport Rule (TR) annual NOx allowances are initially allocated to baseline TR NOx units under subparagraph (2)(a) of this rule, each unit's allocation will be permanently recorded as that unit's "Baseline Allowance". This value will be used to calculate the following:

1. Baseline Allowance Pool. The Baseline Allowance Pool shall be calculated each time TR annual NOx allowances are allocated under paragraph (2) of this rule and shall equal the State Annual Trading Program Budget minus the total of the Baseline Allowances for all baseline TR NOx units that have retired in accordance with Rule 335-3-8-.09.

2. Retired Unit Allowance Pool. The Retired Unit Allowance Pool shall be calculated each time TR NOx allowances are allocated under paragraph (2) of this rule and shall equal the sum of the Baseline Allowances for all TR NOx units that have retired in accordance with Rule 335-3-8-.09.

(d) Maximum Historic Emission Cap. The maximum historic emission cap is identified by using an 8 year historic emission period for each TR NOx unit. The last year of the 8 year period will be the same year as the last year used for determination of heat input under paragraph (3)(b) of this rule. The maximum historic emission cap is the maximum NOx emissions (in tons) that occurred during any control period during the 8 year historic emission period. Data used for this purpose shall be obtained from the EPA Clean Air Markets Division (CAMD). An additional emission cap may be applied if a TR NOx unit has an enforcement action or permit limit in place. The 8 year historic emission values will update every two years to coincide with the allocation control period.

(e) Calculation of TR NOx Allowances for Baseline TR NOx Units.

1. For each control period under paragraph (2) of this rule, the Department will allocate TR NOx allowances from the Baseline Allowance Pool to all baseline TR NOx units in accordance with the following procedures:

(i) The Department will allocate TR NOx allowances to each TR NOx unit under Rule 335-3-8-.08(1)(a) in an amount equaling the unit's share of the State's total 3 year average of heat input determined in accordance with subparagraph (b) of this paragraph, multiplied by the baseline allowance pool. If a TR NOx unit has an initial historic heat input based allocation that exceeds its maximum historic emission cap as defined in subparagraph (3)(e) of this paragraph, then its allocation will equal the maximum historic emission cap for that TR NOx unit.

(ii) Allocations remaining after the application of the maximum historic emission cap are reapportioned on the same basis to baseline TR NOx units whose historic heat input based allocation does not exceed its maximum historic emission cap, if applicable. These steps are repeated until the entire Baseline Allocation Pool is allocated. The resulting TR NOx allocation value is rounded to the nearest whole ton.

(f) Calculation of NOx Allowances for New TR NOx Units. For each control period under paragraph (2) of this rule, after calculating NOx allowances for all baseline TR NOx units that have not retired in accordance with Rule 335-3-8-.9 , the Department will allocate NOx allowances in the Retired Unit Allowance Pool to all new TR NOx units, in accordance with the following procedures:

1. For each new TR NOx unit under Rule 335-3-8-.08(1)(a), that commenced operation or submitted a permit application affirmatively deemed complete by the Department in writing on or before March 1 of the year allocations are to be submitted to the Administrator under paragraph (2) of this rule, the number of TR NOx allowances allocated for each applicable control period will be equal to the unit's share of the State's total 3 year average of heat input for all new TR NOx units, determined in accordance with subparagraph (b) of this paragraph multiplied by the Retired Unit Allowance Pool. If a new TR NOx unit has an initial historic heat input based allocation that exceeds its

maximum historic emission cap as defined in subparagraph (3)(e) of this paragraph, then its allocation equals the maximum historic emission cap for that TR NOx unit .

2. Allocations remaining after application of the maximum historic emission cap are reapportioned on the same basis to new TR NOx units whose historic heat input based allocation does not exceed its maximum historic emission cap, if applicable. These steps are repeated until the entire Retired Unit Allowance Pool is allocated or until all new units receive allocations equal to its maximum historic emission cap. The resulting TR NOx allocation value is rounded to the nearest whole ton.

(g) Adjustment of Baseline NOx Allowance Allocations. If TR NOx allowances remain in the Retired Unit Allowance Pool after allocations are made to all new TR NOx units in accordance with subparagraph (f) of this paragraph, these NOx allowances will be allocated on a pro rata basis to the baseline TR NOx units where historic heat input based allocation does not exceed its maximum historic emission cap, for the applicable control periods.

(h) NOx allowances allocated to baseline TR NOx units based on heat inputs determined in accordance with subparagraph (b)1.(ii) or (b)2.(ii) of this paragraph will be held in the State's general account until the unit commences operation, prior to or during the control period for which NOx allowances were allocated. If the unit does not commence operations, the NOx allowances will be transferred by the Department pro rata to Baseline TR NOx units that were allocated NOx allowances in accordance with subparagraph (b)1.(i) or (b)2.(i) of this paragraph, and whose historic heat input based allocation does not exceed its maximum historic emission cap if applicable. By January 30 of the following year, the Department shall notify the Administrator of the appropriate NOx allowance transfers.

1. NOx allowances allocated to new TR NOx units based on heat inputs determined in accordance with subparagraphs (b)1.(iii), (b)2.(iv), (b)3.(iii), or (b)4.(iii) of this paragraph will be held in the State's general account until the unit commences operation, prior to or during the control period for which NOx allowances were allocated. If the unit does not commence operation, the NOx allowances will be transferred by the Department pro rata to Baseline TR NOx units that were allocated NOx allowances in accordance with subparagraphs (b)1.(i) and (ii), (b)2.(i) and (ii), (b)3.(i), or (b)4.(i) of this paragraph, and whose historic heat input based allocation does not exceed its maximum historic emission cap if applicable. By January 30 of the following year, the Department shall notify the Administrator of the appropriate NOx allowance transfers.

2. NOx allowances will not be allocated to TR NOx units that retire under Rule 335-3-8-.09 prior to the date NOx allowance allocations are submitted to the Administrator under subparagraphs (2)(a), (b), (c), or (d) of this rule.

3. The total NOx allowances allocated for any control period in

accordance with subparagraphs (3)(f), and (g) of this paragraph shall not exceed the State NO_x Annual Trading Program Budget as determined by the applicable, approved State Implementation Plan.

(i) Distribution of remaining TR NO_x Annual Allowances. If any TR NOx Annual allowances remain after allocations are completed in subparagraphs (e) through (h) of this paragraph, the remaining allowances shall be distributed proportional to the allocations made in subparagraphs (e) through (h) of this paragraph beyond the unit's historical emissions cap. However, no unit may receive additional allocations that exceed any enforcement cap or permit limitation.

(j) Units Incorrectly Allocated TR NO_x Annual Allowances. The procedures for addressing units that were incorrectly allocated TR NOx Annual allowances are incorporated by reference as they exist in 40 CFR §97.411(c), Subpart AAAAA as of July 1, 2015. (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

Author: Ronald W. Gore.
Statutory Authority: Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.
History: Effective Date: November 24, 2015. **Amended:** Filed: October 23, 2018; Effective: December 7, 2018.

335-3-8-.46 TR NO_X Ozone Season Group 2 Allowance Allocations.

(1) State NO_X Ozone Season Group 2 Trading Program Budget. The State trading budget for annual allocations of Transport Rule (TR) NO_X Ozone Season Group 2 allowances for the control periods 2017 and thereafter is 13,211 tons.

(2) Timing Requirements for TR NO_X Ozone Season Group 2 Allowance Allocations.

(a) By June 1, 2017, the Department will submit to the Administrator, in a format prescribed by the Administrator, the TR NO_X Ozone Season Group 2 allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in 2019 and 2020.

(b) By June 1, 2018, the Department will submit to the Administrator, in a format prescribed by the Administrator, the TR NO_X Ozone Season Group 2 allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in 2021 and 2022.

(c) By June 1, 2019, and every other year thereafter, the Department shall submit to the Administrator, in a format prescribed by the Administrator, the TR NO_X Ozone Season Group 2 allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in the two years that are four and five years after the year of the applicable deadline for submission under this paragraph.

(3) TR NO_X Ozone Season Group 2 Allowance Allocations.

apply:

(a) Definitions. For the purpose of this rule, the following definitions

1. Baseline TR NO_X Ozone Season Unit. A TR NO_X Ozone Season Group 2 unit that either:

(i) Commenced operation on or before May 1, 2014; or

(ii) Submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before May 1, 2014.

2. New TR NO_X Ozone Season Unit. A TR NO_X Ozone Season Group 2 unit that does not meet the definition of a Baseline TR NO_X Ozone Season unit as defined in subparagraph (3)(a)1. of this paragraph.

(b) Determination of Heat Input.

1. The heat input (in mmBtu) used for calculating TR NO_X Ozone Season Group 2 allowance allocations under subparagraph (2)(a) of this rule that are to be submitted to the Administrator by June 1, 2017, will be:

(i) For a Baseline TR NO_X Ozone Season unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated, in 2011, 2012, 2013, 2014, and 2015; or

(ii) For a Baseline TR NO_X Ozone Season unit that did not commence operation on or before May 1, 2014, but had submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before May 1, 2014, the expected actual ozone season heat input based on actual utilization data of similar sources.

(iii) For a New TR NO_X Ozone Season unit, the expected actual ozone season heat input based on actual utilization data of similar sources.

2. The heat input (in mmBtu) used for calculating TR NO_X Ozone Season Group 2 allowance allocations under subparagraph (2)(b) of this rule that are to be submitted to the Administrator by June 1, 2018, will be:

(i) For a Baseline TR NO_X Ozone Season unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated, in 2012, 2013, 2014, 2015, and 2016; or

(ii) For a Baseline TR NO_X Ozone Season unit that did not commence operation on or before May 1, 2015, but had submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before May 1, 2014, the expected actual ozone season heat input based on actual utilization data of similar sources.

(iii) For a New TR NO_X Ozone Season unit that commenced operation on or before May 1, 2016, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated in 2015 and 2016.

(iv) For a New TR NO_X Ozone Season unit that did not commence operation on or before May 1, 2016, the expected actual ozone season heat input based on actual utilization data of similar sources.

3. The heat input (in mmBtu) used for calculating TR NO_X Ozone Season Group 2 allowance allocations under subparagraph (2)(c) of this rule that are to be submitted to the Administrator by June 1, 2019, and all subsequent allocation years will be:

(i) For a Baseline TR NO_X Ozone Season unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated for the five most recent control periods

available prior to the deadline submission year.

(ii) For a New TR NO_X Ozone Season unit that commenced operation prior to May 1 of the most recent control period available prior to the submission year, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated, for the five most recent control periods available prior to the submission year; or

(iii) For a New TR NO_X Ozone Season unit that did not commence operation prior to May 1 of the most recent control period available prior to the submission year, the expected actual ozone season heat input based on actual utilization data of similar sources.

4. The unit's total heat input for the control period in each year specified under subparagraph (b) of this paragraph will be determined in accordance with 40 CFR 75 if the TR NO_X Ozone Season Group 2 unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the Administrator and the Department for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75 for the year.

(c) Establishment of Baseline and Retired Unit Allowance Pools. At the time Transport Rule (TR) NO_X Ozone Season Group 2 allowances are initially allocated to Baseline TR NO_X Ozone Season units under subparagraph (2)(a) of this rule, each unit's allocation will be permanently recorded as that unit's "Baseline Allowance". This value will be used to calculate the following:

1. Baseline Allowance Pool. The Baseline Allowance Pool shall be calculated each time TR NO_X Ozone Season Group 2 allowances are allocated under paragraph (2) of this rule and shall equal the State Ozone Season Group 2 trading program budget minus the total of the Baseline Allowances for all Baseline TR NO_X Ozone Season units that have retired in accordance with 335- 3-8-.41 and minus 13 allowances set aside for any new TR NOx Oxone Season Group 2 units located in Indian country.

2. Retired Unit Allowance Pool. The Retired Unit Allowance Pool shall be calculated each time TR NO_X Ozone Season Group 2 allowances are allocated under paragraph (2) of this rule and shall equal the sum of the Baseline Allowances for all TR NO_X Ozone Season Group 2 units that have retired in accordance with 335-3-8-.41.

3. Indian Country New Unit Allowance Pool. A total of 13 TR NOx Ozone Season Group 2 allowances will be initially set aside for any new TR NOx Ozone Season Group 2 units in Indian country. If the Indian country allowances are not allocated by the Administrator and are made available to the Department for allocation, the allowances will be proportionally distributed, to existing units in the state in accordance with subparagraphs (g) and (i) of this paragraph.

(d) Maximum Historic Emission Cap. The Maximum

Historic Emission Cap is identified by using an 8 year historic emission period for each TR NO_X Ozone Season Group 2 unit. The last year of the 8 year period will be the same year as the last year used for determination of heat input under subparagraph (3)(b) of this paragraph. The Maximum Historic Emission Cap is the maximum NO_X emissions (in tons) that occurred during any control period during the 8 year historic emission period. Data used for this purpose shall be obtained from the EPA Clean Air Markets Division (CAMD). An additional emission cap may be applied if a TR NO_X Ozone Season Group 2 unit has an enforcement action or permit limit in place. The 8 year historic emission values will update every two years to coincide with the allocation control period.

(e) Calculation of TR NO_X Ozone Season Group 2 Allowances for Baseline TR NO_X Ozone Season Units.

1. For each control period under paragraph (2) of this rule, the Department will allocate TR NO_X Ozone Season Group 2 allowances from the Baseline Allowance Pool to all Baseline TR NO_X Ozone Season units in accordance with the following procedures:

(i) The Department will allocate TR NO_X Ozone Season Group 2 allowances to each TR NO_X Ozone Season Group 2 unit under 335-3-8-.40(1)(a) in an amount equaling the unit's share of the State's total 3 year average of heat input determined in accordance with subparagraph (b) of this paragraph, multiplied by the Baseline Allowance Pool. If a TR NO_X Ozone Season Group 2 unit has an initial historic heat input based allocation that exceeds its maximum historic emission cap as defined in subparagraph (3)(e) of this paragraph, then its allocation will equal the maximum historic emission cap for that TR NO_X Ozone Season Group 2 unit.

(ii) Allocations remaining after the application of the maximum historic emission cap are reapportioned on the same basis to Baseline TR NO_X Ozone Season units whose historic heat input based allocation does not exceed its maximum historic emission cap, if applicable. These steps are repeated until the entire Baseline Allocation Pool is allocated. The resulting TR NO_X Ozone Season Group 2 allocation value is rounded to the nearest whole ton.

(f) Calculation of NO_X Allowances for New TR NO_X Ozone Season Units. For each control period under paragraph (2) of this rule, after calculating NO_X allowances for all Baseline TR NO_X Ozone Season units that have not retired in accordance with 335-3-8-.41, the Department will allocate NO_X allowances in the Retired Unit Allowance Pool to all New TR NO_X Ozone Season units, in accordance with the following procedures:

1. For each New TR NO_X Ozone Season unit under 335-3-8-.40(1)(a), that commenced operation or submitted a permit application affirmatively deemed complete by the Department in writing on or before March 1 of the year allocations are to be submitted to the Administrator under paragraph (2) of this rule, the

number of TR NO_X Ozone Season Group 2 allowances allocated for each applicable control period will be equal to the unit's share of the State's total 3 year average of heat input for all New TR NO_X Ozone Season units, determined in accordance with subparagraph (b) of this paragraph multiplied by the Retired Unit Allowance Pool. If a New TR NO_X Ozone Season unit has an initial historic heat input based allocation that exceeds its maximum historic emission cap as defined in subparagraph (3)(e) of this paragraph, then its allocation equals the maximum historic emission cap for that TR NO_X Ozone Season Group 2 unit .

2. Allocations remaining after application of the maximum historic emission cap are reapportioned on the same basis to New TR NO_X Ozone Season units whose historic heat input based allocation does not exceed its maximum historic emission cap, if applicable. These steps are repeated until the entire Retired Unit Allowance Pool is allocated or until all new units receive allocations equal to its maximum historic emission cap. The resulting TR NO_X Ozone Season Group 2 allocation value is rounded to the nearest whole ton.

(g) Adjustment of Baseline NO_X Allowance Allocations. If TR NO_X Ozone Season Group 2 allowances remain in the Retired Unit Allowance Pool after allocations are made to all New TR NO_X Ozone Season units in accordance with subparagraph (f) of this paragraph, or if the TR NOx Ozone Season Group 2 allowances from the Indian Country New Unit Allowance Pool become available for allocation by the Department in accordance with subparagraph (c)3 of this paragraph, these NO_X allowances will be allocated on a pro rata basis to the Baseline TR NO_X Ozone Season units where historic heat input based allocation does not exceed its maximum historic emission cap, for the applicable control periods.

(h) NO_X allowances allocated to Baseline TR NO_X Ozone Season units based on heat inputs determined in accordance with subparagraph (b)1.(ii) or (b)2.(ii) of this paragraph will be held in the State's general account until the unit commences operation, prior to or during the control period for which NO_X allowances were allocated. If the unit does not commence operations, the NO_X allowances will be transferred by the Department pro rata to Baseline TR NO_X Ozone Season units that were allocated NO_X allowances in accordance with subparagraph (b)1.(i) or (b)2.(i) of this paragraph, and whose historic heat input based allocation does not exceed its maximum historic emission cap if applicable. By January 30 of the following year, the Department shall notify the Administrator of the appropriate NO_X allowance transfers.

1. NO_X allowances allocated to New TR NO_X Ozone Season units based on heat inputs determined in accordance with subparagraphs (b)1.(iii), (b)2.(iv), (b)3.(iii), or (b)4.(iii) of this paragraph will be held in the State's general account until the unit commences operation, prior to or during the control period for which NO_X allowances were allocated. If the unit does not commence operations,

the NO_X allowances will be transferred by the Department pro rata to Baseline TR NO_X Ozone Season units that were allocated NO_X allowances in accordance with subparagraphs (b)1.(i) and (ii), (b)2.(i) and (ii), (b)3.(i), or (b)4.(i) of this paragraph, and whose historic heat input based allocation does not exceed its maximum historic emission cap if applicable. By January 30 of the following year, the Department shall notify the Administrator of the appropriate NO_X allowance transfers.

2. NO_X allowances will not be allocated to TR NO_X Ozone Season Group 2 units that retire under 335-3-8-.41 prior to the date NO_X allowance allocations are submitted to the Administrator under subparagraphs (2)(a), (b), (c), or (d) of this rule.

3. The total TR NO_X Ozone Season Group 2 allowances allocated for any control period in accordance with subparagraphs (3)(f), and (g) of this paragraph shall not exceed the State Ozone Season Group 2 Trading Program Budget as determined by the applicable, approved State Implementation Plan.

(i) Distribution of remaining TR NO_X Ozone Season Group 2 Allowances. If any TR NOx Ozone Season Group 2 allowances remain after allocations are completed in subparagraphs (e) through (h) of this paragraph, the remaining allowances shall be distributed proportional to the allocations made in subparagraphs (e) through (h) of this paragraph beyond the unit's historical emissions cap. However, no unit may receive additional allocations that exceed any enforcement cap or permit limitation.

(j) (Units Incorrectly Allocated TR NO_X Ozone Season Group 2 Allowances. The procedures for addressing units that were incorrectly allocated TR NO_X Ozone Season Group 2 allowances are incorporated by reference as they exist in 40 CFR §97.811(c), Subpart EEEEE as of October 26, 2016 (81 FR 74504) except for the provisions found in 40 CFR §§97.811(c)(5)(iii). (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

Author: Ronald W. Gore.
Statutory Authority: Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.
History: Effective Date: November 24, 2015. **Amended:** Effective: June 2, 2017. **Amended:** Filed: October 23, 2018; Effective: December 7, 2018.

Attachment 9

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-6 of the Department's Water Division's Water Quality Program Rules and Regulations in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

WHEREAS, a public hearing was held before a representative of the Alabama Department of Environmental Management designated by the Environmental Management Commission for the purpose of receiving data, views and arguments on the amendment of such proposed rules; and

WHEREAS, the Alabama Department of Environmental Management did not receive any written or oral comments at the public hearing or during the public comment period.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-6 [rule 335-6-15-.03/Applicability (Amend); 335-6-15-.06/Performance Standards for New UST Systems and Dispensers (Amend); 335-6-15-.09/Operation, Maintenance, and Testing or Inspection of Spill and Overfill Prevention Equipment and Containment Systems; and Walkthrough Inspections (Amend); 335-6-15-.14/General Release Detection Requirements for All UST Systems (Amend); 335-6-15-.18/Methods of Release Detection for Underground Piping (Amend); 335-6-15-.48/UST Systems with Field-Construction Tanks and Airport Hydrant Fuel Distribution Systems (Amend;335-6-16-.09/Scope of Tank Trust Fund Coverage (Amend)] of the Department's Water Quality Program rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

ADEM Admin. Code division 335-6 – Water Quality Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 19th day of October 2018.

APPROVED:

DISAPPROVED:

ABSTAINED:

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 19th day of October 2018.

Samuel L. Miller, Chair
Environmental Management Commission

335-6-15-.03 Applicability.

(1) The requirements of this chapter apply to all owners and operators of an UST system as defined in rule 335-6-15-.02 except as otherwise provided for in paragraphs (2) and (3) of this rule.

(a) Previously deferred UST systems. UST systems with field-constructed tanks, UST systems with airport hydrant fuel distribution systems, and UST systems that store fuel solely for use by emergency power generators must meet the requirements of this part as follows:

1. UST systems with field-constructed tanks and UST systems with airport hydrant fuel distribution systems must meet the requirements in rule 335-6-15-.48.

2. UST systems that store fuel solely for use by emergency power generators installed before August 6, 2007 must meet rules 335-6-15-.14 through 335-6-15-.19 on or before December 8, 2020.

3. UST systems that store fuel solely for use by emergency power generators installed on or after August 6, 2007 must meet all applicable requirements of rules 335-6-15-.14 through 335-6-15-.19 at installation.

4. If UST systems installed before August 6, 2007 that store fuel solely for use by emergency power generators have new underground piping installed on or after August 6, 2007, the new underground piping is subject to all the rules in this chapter.

(2) Exclusions. The following UST systems are excluded from the requirements of this chapter:

(a) Any UST system holding hazardous wastes listed or identified under division 14 of the ADEM Administrative Code, or a mixture of such hazardous wastes and other regulated substances.

(b) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under chapter 335-6-5 or 335-6-6 of the ADEM Administrative Code.

(c) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(d) Any UST system whose capacity is 110 gallons or less.

(e) Any UST system that contains a de minimis concentration of regulated substances.

(f) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(3) Partial Exclusions. The following UST systems are only subject to rules 335-6-15-.04, 335-6-15-.20 through 335-6-15-.32, and 335-6-15-.43:

(a) Wastewater treatment tank systems not covered in subparagraph (2)(b) of this rule;

(b) Aboveground storage tanks associated with:

1. UST systems with airport hydrant fuel distribution systems regulated under rule 335-6-15-.48; and

2. UST systems with field-constructed tanks regulated under rule 335-6-15-.48;

(c) Any UST system containing radioactive materials that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 and following); and

(d) Any UST system that is part of an emergency generator system at nuclear power generation facilities licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to 10 CFR part 50.

Author: Sonja Massey, Curt Johnson, Lee Davis.
Statutory Authority: Code of Alabama 1975, § 22-36-3.
History: Effective: April 5, 1989. **Amended:** Effective: October 2, 2003; **Amended:** Effective: August 6, 2007; **Amended:** Effective: December 8, 2017; **Amended:** Filed: October 23, 2018; Effective: December 7, 2018.

335-6-15-.06 Performance Standards for New UST Systems and Dispensers. In order to prevent releases due to structural failure, corrosion, leakage from submersible pumps and dispensers or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new USTs, underground piping, UST systems and/or dispensers must install this equipment in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and meet the following requirements:

(a) USTs. USTs installed on August 6, 2007 and thereafter must be manufactured so that any portion of the underground storage tank that is underground and routinely contains product has an inner and outer wall, and interstitial space. The USTs must be designed to allow monitoring of the integrity of both the inner and outer wall, contain a leak into the interstitial space until it is detected and removed, and prevent a release to the environment at any time during its operational life. Each UST must be properly designed and constructed, and any portion in contact with the ground that routinely contains product, as well as the metal outer wall of double wall underground storage tank which is in contact with the ground, must be protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

1. The UST is constructed of fiberglass-reinforced plastic; or

2. The UST is constructed of steel and cathodically protected in the following manner:

(i) The UST is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Cathodic protection systems are designed to allow determination of current operating status according to the requirements of rule 335-6-15-.10; and

(iv) Cathodic protection systems are operated and maintained in accordance with rule 335-6-15-.10.

3. The UST is constructed of steel and clad or jacketed with a nonmetallic material; or

4. The UST construction and corrosion protection are determined by the Department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements of subparagraphs (a)1. through 3. of this rule.

(b) Underground Piping. All underground piping, other than suction underground piping that meets the requirements specified in rule 335-6-15-.15(b)2.(i), (ii), (iii), (iv), and (v), installed under the ground on August 6, 2007 and

thereafter must be manufactured so that underground piping has an inner and outer wall and interstitial space. Such underground piping must be designed to allow monitoring of the integrity of both the inner and outer wall, contain a leak into the interstitial space until it is detected and removed, and prevent a release to the environment at any time during its operational life. All metal underground piping that routinely contains regulated substances and is in contact with the ground, as well as the metal outer wall of double wall underground piping which is in contact with the ground, must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory, as specified below:

1. The underground piping is constructed of either a nonmetallic material such as fiberglass-reinforced plastic (rigid) or thermoplastic (flexible). Nonmetallic underground piping installed on January 10, 2006, and thereafter, must meet the requirements of the most current edition of Underwriters Laboratories Inc. Standard for Safety for Nonmetallic Underground Piping for Flammable Liquids, UL 971. Performance claims must be demonstrated by an evaluation properly conducted in accordance with UL 971; or

2. The underground piping is constructed of steel and cathodically protected in the following manner:

(i) The underground piping is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Cathodic protection systems are designed to allow determination of current operating status according to the requirements of rule 335-6-15-.10; and

(iv) Cathodic protection systems are operated and maintained in accordance with rule 335-6-15-.10.

3. The underground piping construction and corrosion protection are determined by the Department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in subparagraphs (b)1. and 2. of this rule.

(c) Spill and Overfill Prevention Equipment. Except as provided for in subparagraphs (c)3. and 4. of this rule, to prevent spilling and overfilling associated with product transfer to the UST, owners and operators must use the following spill and overfill prevention equipment or preventive measures in subparagraphs (c)1. and 2. of this rule:

1. Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for

example, a spill catchment basin) operated and maintained in accordance with rule 335-6-15-.09; and

2. Overfill prevention equipment that will:

(i) Automatically shut off flow into the underground storage tank when the underground storage tank is no more than 95 percent full; or

(ii) Alert the transfer operator when the underground storage tank is no more than 90 percent full by restricting the flow into the underground storage tank or triggering a high-level alarm.

3. Owner and operators are not required to use the spill and overfill prevention equipment specified in subparagraphs (c)1. and 2. of this rule if:

(i) Alternative equipment is used that is determined by the Department to be no less protective of human health and the environment than the equipment specified in subparagraph (c)1. or 2. of this rule; or

(ii) The UST system is filled by transfers of no more than 25 gallons at one time.

4. Flow restrictors used in vent lines may not be used to comply with subparagraph (c)2. of this rule when overfill prevention is installed or replaced on or after December 8, 2017.

5. Spill and overfill prevention equipment must be periodically tested or inspected in accordance with rule 335-6-15-.09(1)(a)1. and (b)1.

(d) Submersible Pump, Under Dispenser, and Piping Transition Containment. USTs installed with submersible pumps on August 6, 2007 and thereafter must have submersible pump containment sumps; new dispenser systems installed on August 6, 2007 and thereafter must have under dispenser containment sumps; and piping transitions installed on or after December 8, 2017 must have containment sumps.

1. The sumps must be operated and maintained in accordance with rule 335-6-15-.09(1)(c). Containment sumps must be designed, constructed, installed, and maintained to:

(i) Be liquid-tight on all sides, bottom and all penetrations to contain leakage and prevent release of regulated substances from equipment related to dispensers and submersible pumps until the regulated substance is detected and removed; and

(ii) Be compatible with the substance conveyed by the underground piping to prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(iii) Be able to allow access to the components in the containment sumps, and be periodically visually inspected for evidence of a leakage into the sumps.

(e) Installation. UST systems must be properly installed:

1. Under the supervisory control of an individual or individuals certified in accordance with the requirements in rule 335-6-15-.47;

2. In accordance with codes of practice developed by nationally recognized associations or independent testing laboratories;

3. In accordance with the manufacturer's instructions; and

4. In accordance with plans and specifications required under rule 335-6-15-.08 and reviewed by the Department to include any modifications required to be made by the Department.

(f) The Department reserves the right to inspect an UST system within 30 days of submission of plans or notification of installation prior to the UST system being fully backfilled and placed into operation. The Department may authorize a representative to make this inspection.

Author: Sonja Massey, Curt Johnson, Lee Davis.
Statutory Authority: Code of Alabama 1975, § 22-36-3.
History: Effective: April 5, 1989. **Amended:** Effective: January 10, 2006; **Amended:** Effective: August 6, 2007; **Amended:** Effective: April 25, 2008; **Amended:** Effective: January 16, 2012; **Amended:** Effective: April 1, 2014; **Amended:** Effective: December 8, 2017; **Amended:** Filed: October 23, 2018; Effective: December 7, 2018.

335-6-15-.09 Operation, Maintenance, and Testing or Inspection of Spill and Overfill Prevention Equipment and Containment Systems; and Walkthrough Inspections.

(1) Owners and operators of UST systems must comply with the following operation, maintenance, and testing or inspection requirements for spill prevention equipment, overfill prevention equipment, and containment sumps and sensors to ensure that releases due to leaking, spilling or overfilling do not occur; submit testing and inspection results in accordance with rule 335-6-15-.13(a)5.; and keep testing and inspection records in accordance with rule 335-6-15-.13(b)5.; unless a UST system is temporarily closed in accordance with rule 335-6-15-.33.

(a) Spill Prevention Equipment. Spill prevention equipment must be periodically checked in accordance with the walkthrough inspection requirements in paragraph (2) of this rule and meet the following requirements:

1. Single walled spill prevention equipment shall be tested for leakage to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing at least once every three years, or upon repair or replacement, using one of the following options:

(i) Testing requirements developed by the manufacturer (Note: Owners and operators may use this option only if the manufacturer has developed requirements);

(ii) Test methods from a code of practice developed by a nationally recognized association or independent testing laboratory; or

(iii) Testing requirements determined by the Department to be no less protective of human health and the environment than the testing requirements listed in subparagraphs (1)(a)1.(i) and (ii) of this rule.

2. Double walled spill prevention equipment with an interstitial space shall have the integrity of both walls periodically checked in accordance with the walkthrough inspection requirements in paragraph (2) of this rule. If this periodic checking is discontinued, owners and operators must begin using one of the testing options provided for single walled spill catchment basins in subparagraph (1)(a)1. of this rule and conduct a test within 30 days.

3. Spill prevention equipment must be emptied before the transfer of regulated substance to the underground storage tank so that all the volume is available to contain a spill. If a breach in the spill prevention equipment is visible or if a spill prevention equipment leak test fails, it must be repaired or replaced prior to receiving any further deliveries of a regulated substance.

4. When a regulated substance is being released or is suspected to have been released from spill prevention equipment to the surrounding surface or subsurface, notify the Department of a suspected release in accordance with rule 335-6-15-.20.

(b) Overfill Prevention Equipment. Overfill prevention equipment in use before December 8, 2017, shall be inspected not later than December 8, 2020 and at least once every three years thereafter; when brought into use on or after December 8, 2017, shall be inspected upon installation and at least once every three years thereafter; and must meet the following inspection requirements:

1. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in rule 335-6-15-.06(c)2. and will activate when regulated substance reaches that level. Inspections must be conducted using one of the following options:

(i) Inspection requirements developed by the manufacturer (Note: Owners and operators may use this option only if the manufacturer has developed requirements);

(ii) Inspection methods from a code of practice developed by a nationally recognized association or independent testing laboratory; or

(iii) Inspection requirements determined by the Department to be no less protective of human health and the environment than the inspection requirements listed in subparagraphs (1)(b)1.(i) and (ii) of this rule.

2. Owners and operators must ensure that the volume available in the underground storage tank is greater than the volume of product to be transferred to the underground storage tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

(c) Under Dispenser, Submersible Pump, and Other UST System Containment Sumps. These containment sumps must be periodically checked in accordance with the walkthrough inspection requirements in paragraph (2) of this rule and meet the following requirements:

1. When a regulated substance is discovered in a containment sump:

(i) Remove the regulated substance within 24 hours; any regulated substance which is removed must be disposed of in accordance with all state of Alabama requirements; and

(ii) Repair or replace any necessary equipment to prevent further leakage of regulated substance into the containment sump within a time period acceptable to the Department, and immediately after repair or replacement, test the sump for leakage to ensure it is liquid tight in accordance with one of the vacuum, pressure, or liquid testing options provided in subparagraphs (1)(a)1.(i),(ii), (iii) of this rule within a time period acceptable to the Department.

2. When a regulated substance is being released or is suspected to have been released from a containment sump to the surrounding surface or subsurface:

(i) Shut off the submersible pump; and

(ii) Notify the Department of a suspected release in accordance with rule 335-6-15-.20.

3. Containment sumps used for interstitial monitoring of underground piping must be maintained so that they continuously remain free of water, regulated substance and debris,

4. The operation of any liquid sensors in a containment sump used for interstitial monitoring of underground piping must be tested annually to ensure that they are working properly. Beginning December 8, 2017, testing must be conducted in accordance with one of the testing options provided in subparagraphs (1)(a)1.(i),(ii), (iii) of this rule.

5. Breaches discovered in a containment sumps used for interstitial monitoring of underground piping which may result in a release of a regulated substance must immediately be repaired or the containment sump replaced. After repair or replacement, the containment sump must be tested using a vacuum, pressure or liquid method in accordance with one of the options provided in subparagraphs (1)(a)1.(i), (ii), or (iii) of this rule to ensure the sump is liquid tight.

6.

Beginning December 8, 2020 for UST systems in use before December 8, 2017 and beginning upon installation for UST systems brought into use on or after December 8, 2017, all containment sumps used for interstitial monitoring of underground piping must prevent releases to the environment by meeting one of the following:

(i) To ensure single walled containment sumps used for interstitial monitoring of underground piping are liquid tight, those installed prior to December 8, 2017 must have an initial test not later than December 8, 2020 and must be tested at least once every three years thereafter, and those brought into use on or after the December 8, 2017 must be tested upon installation and be tested at least once every three years thereafter. Testing must be conducted using a vacuum, pressure, or liquid method in accordance with one of the options provided in subparagraphs (1)(a)1.(i), (ii), or (iii) of this rule; or

(ii) When containment sumps used for interstitial monitoring of underground piping are double walled, the integrity of both walls must be periodically checked in accordance with the walkthrough inspection requirements in subparagraph (2) of this rule. If this periodic checking is discontinued, owners and operators must begin using one of the testing options provided for single walled containment sumps in subparagraph (1)(c)6.(i) of this rule and conduct a test within 30 days.

(2) Walkthrough Inspections. To properly operate and maintain UST systems, owners and operators of UST systems must conduct walkthrough

inspections beginning not later than October 13, 2018 and thereafter. Conduct walkthrough inspections in accordance with either subparagraphs (2)(a), and (2)(b) or (c) of this rule and keep inspection records in accordance with rule 335-6-15-.13(b)11., unless a UST system is temporarily closed in accordance with rule 335-6-15-.33.

(a) Conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified in subparagraphs (2)(a)1. and 2. of this rule:

1. Every 30 days (Exception: spill prevention equipment at UST systems receiving deliveries at intervals greater than every 30 days may be checked prior to each delivery):

(i) Visually check spill prevention equipment for damage; remove liquid or debris; check for and remove obstructions in the fill pipe; check the fill cap to make sure it is securely on the fill pipe; and for double walled spill prevention equipment with interstitial monitoring, also check the integrity of both walls by checking for leakage in the interstitial space, and

(ii) Check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and ensure records of release detection testing are reviewed, passing and current, and

2. Annually:

(i) Visually check all containment sumps for damage or leaks to the containment area, or releases to the environment, and remove liquid or debris; and for double walled sumps with interstitial monitoring, also check the integrity of both walls by checking for leakage in the interstitial space, and

(ii) Check hand held release detection equipment devices such as tank gauge sticks or groundwater bailers for operability and serviceability;

(b) Conduct operation and maintenance walkthrough inspections according to a standard code of practice developed by a nationally recognized association or independent testing laboratory that checks equipment comparable to that indicated in subparagraph (2)(a) of this rule; or

(c) Conduct operation and maintenance walkthrough inspections developed by the Department that checks equipment comparable to that indicated in subparagraph (2)(a) of this rule.

(3) The owner and operator must report, investigate, and clean up any leaks, spills and overfills in accordance with rule 335-6-15-.23.

Author: Sonja Massey, Curt Johnson, Lee Davis.
Statutory Authority: Code of Alabama 1975, § 22-36-3.
History: Effective: April 5, 1989; **Amended:** Effective: August 6, 2007; **Amended:** Effective: January 16, 2012; **Amended:** Effective: April 1, 2014; **Amended:** Effective: December 8, 2017; **Amended:** Filed: October 23, 2018; Effective: December 7, 2018.

335-6-15-.14 General Release Detection Requirements for All UST Systems.

(1) Owners and operators of UST systems must provide a method, or combination of methods, of release detection that:

(a) Can detect a release from any portion of the underground storage tank and the connected underground piping that routinely contains product;

(b) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition;

(c) Is operated and maintained, and electronic and mechanical components are tested for proper operation, in accordance with one of the following: manufacturer's instructions; a code of practice developed by a nationally recognized association or independent testing laboratory; or requirements determined by the Department to be no less protective of human health and the environment than the two options listed above. A test of the proper operation must be performed at least annually and must cover the following components and criteria:

1. Automatic Tank Gauge and Other Controllers. Beginning on October 13, 2018 and thereafter; test alarm, verify system configuration, test battery backup;

2. Probes and Sensors. Beginning on October 13, 2018 and thereafter; inspect for residual buildup, ensure floats move freely, ensure shaft is not damaged, ensure cables are free of kinks and breaks, test alarm operability and communication with controller, ensure that they are positioned properly;

3. Automatic Line Leak Detector. Test operation to meet criteria in rule 335-6-15-.18(a) by simulating a leak;

4. Vacuum Pumps and Pressure Gauges. Beginning on October 13, 2018 and thereafter; ensure proper communication with sensors and controller; and

5. Hand-held Electronic Sampling Equipment Associated with Groundwater and Vapor Monitoring. Beginning on October 13, 2018 and thereafter; ensure proper calibration and operation.

(d) Meets the performance requirements in rules 335-6-15-.17, 335-6-15-.18, or 335-6-15-.48, as applicable, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, the methods must be capable of detecting the leak rate or quantity specified for that method in rules 335-6-15-.17(b), (c), (d), (h) and (i), 335-6-15-.18(a) and (b), and 335-6-.48 with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(2) When a release detection method operated in accordance with the performance standards in rules 335-6-15-.17, 335-6-15-.18, or 335-6-15-.48 indicates a release may have occurred, owners and operators must notify the Department in accordance with rule 335-6-15-.20.

(3) Any UST system that cannot apply a method of release detection that complies with the requirements of this chapter must temporarily close the UST system in accordance with rule 335-6-15-.33 and must permanently close the UST system in accordance with rules 335-6-15-.34 through 335-6-15-.37 except as follows:

(a) For UST systems storing fuel solely for the use of emergency power generators installed before August 6, 2007, paragraph (3) of this rule applies beginning on December 8, 2020 and thereafter. For UST systems with field-constructed tanks, and UST systems with airport hydrant fuel distribution systems, paragraph (3) of this rule applies beginning on October 13, 2018 and thereafter.

(4) Owners or operators of UST systems storing fuel solely for the use of emergency power generators installed before August 6, 2007, UST systems with airport hydrant fuel distribution systems, and UST systems with field-constructed tanks shall submit to the Department a description of the type of release detection method or methods which will be used at each site at which the UST system is located. This description and any required plans and specifications required by rule 335-6-15-.08 shall be submitted 30 days prior to the implementation of release detection requirements for these systems as described in rules 335-6-15-.03(1)(a)1. and 2.

(5) Release detection on UST systems employing vapor monitoring, groundwater monitoring, or interstitial monitoring using a secondary barrier, shall be installed in accordance with the plans and specifications required by rule 335-6-15-.08.

Author: Sonja Massey, Curt Johnson, Lee Davis.
Statutory Authority: Code of Alabama 1975, § 22-36-3.
History: Effective: April 5, 1989. **Amended:** Effective: October 2, 2003; **Amended:** Effective: April 25, 2008; **Amended:** Effective: December 8, 2017; **Amended:** Filed: October 23, 2018; Effective: December 7, 2018.

335-6-15-.18 Methods of Release Detection for Underground Piping. Each method of release detection for underground piping used to meet the requirements of rule 335-6-15-.15 must be conducted in accordance with the following:

(a) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through underground piping may be used. Beginning August 6, 2008 and thereafter, methods which alert the operator to the presence of a leak by triggering an audible or visual alarm may be used only if they also restrict or shut off the flow of regulated substances through underground piping; except beginning December 8, 2017, emergency power generator UST systems may use audible or visual alarm methods without restricting or shutting off flow. All automatic line leak detector methods must detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour. An annual test of the operation of the leak detector must be conducted in accordance with rule 335-6-15-.14(1)(c).

(b) Line tightness testing. A periodic test of underground piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure. When a test method is required by the manufacturer to be performed manually, the test must be performed by an individual having current certification of training from the manufacturer of the test method.

(c) Underground storage tank methods applicable to piping. Except as described in rule 335-6-15-.15(a), any of the methods in rule 335-6-15-.17(e) through (i) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

Author: Sonja Massey, Curt Johnson, Lee Davis.
Statutory Authority: Code of Alabama 1975, § 22-36-3.
History: Effective: April 5, 1989. **Amended:** Effective: August 6, 2007; **Amended:** Effective: April 1, 2014; **Amended:** Effective: December 8, 2017; **Amended:** Filed: October 23, 2018; Effective: December 7, 2018.

335-6-15-.48 <u>UST Systems with Field-Constructed Tanks and UST Systems with Airport Hydrant Fuel Distribution Systems</u>.

(1) Except as provided in paragraph (2) of this rule, owners and operators of UST systems with field-constructed tanks and UST systems with airport hydrant fuel distribution systems must comply with the requirements of this chapter.

(a) For UST systems with field-constructed tanks and UST systems with airport hydrant fuel distribution systems installed before December 8, 2017, the requirements are effective according to the following schedule:

Requirement	**Effective Date**
Notification (rule 335-6-15-.05)	*December 8, 2018*
Upgrading (rule 335-6-15-.07 and this rule)	October 13, 2018
General Operating Requirements (rules 335-6-15-.09 through 335-6-15-.13 and this rule)	October 13, 2018
Release Detection (rules 335-6-15-.14 through 335-6-15-.19 and this rule)	October 13, 2018
Release Reporting, Response, and Investigation (rules 335-6-15-.20 through 335-6-15-.32)	*December 8, 2017*
Closure (rules 335-6-15-.34 through 335-6-15-.37)	*December 8, 2017*
Financial Responsibility (rules 335-6-15-.43 through 335-6-15-.44 and this rule)	October 13, 2018
Operator Training (rule 335-6-15-.46)	October 13, 2018

(b) For UST systems with field-constructed tanks and UST systems with airport hydrant fuel distribution systems installed on or after December 8, 2017, all the requirements of this chapter apply at installation.

(c) In addition to codes of practice developed by nationally recognized associations or independent testing laboratories allowed in rule 335-6-15-.06, owners and operators of UST systems with field-constructed tanks and UST systems with airport hydrant fuel distribution systems may also use military construction criteria when designing, constructing, and installing UST systems with field-constructed tanks and UST systems with airport hydrant fuel distribution systems.

(2) Owners and operators of UST systems with field-constructed tanks and UST systems with airport hydrant fuel distribution systems must comply with the following additions, exceptions, and alternatives.

(a) Exception to piping secondary containment requirements. Owners and operators may use single walled underground piping when installing underground piping associated with UST systems with field-constructed tanks with a nominal capacity greater than 50,000 gallons, and underground piping associated with UST systems with airport hydrant fuel distribution systems. Underground piping associated with UST systems with field-constructed tanks less than or equal to a nominal capacity of 50,000 gallons and not part of an UST system with airport hydrant fuel distribution system must meet the secondary containment requirements in rule 335-6-15-.06(b) at installation.

(b) Upgrade requirements for UST systems with field-constructed tanks and UST systems with airport hydrant fuel distribution systems where installation commenced before December 8, 2017. These UST systems must meet the following upgrade requirements no later than October 13, 2018, or be permanently closed in accordance with rules 335-6-15-.34 through 335-6-15-.37 of this chapter:

1. Corrosion protection. UST system components in contact with the ground that routinely contain regulated substances must meet one of the following:

(i) Except as provided in subparagraph (2)(a) of this rule, the UST system performance standards for new underground storage tanks in rule 335-6-15-.06(a) and for new underground piping in rule 335-6-15-.06(b); or

(ii) Be constructed of metal and cathodically protected according to a code of practice developed by a nationally recognized association or independent testing laboratory and meet the following:

(I) The cathodic protection requirements in rule 335-6-15-.06(a)2.(ii), (iii), and (iv) for underground storage tanks, and rule 335-6-15-.06(b)2.(ii), (iii), and (iv) for underground piping,

(II) Underground storage tanks greater than 10 years old without cathodic protection must be assessed to ensure the underground storage tank is structurally sound and free of corrosion holes prior to adding cathodic protection in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory. The assessment must be by internal inspection or another method determined by the Department to adequately assess the underground storage tank for structural soundness and corrosion holes.

2. Spill and overfill prevention. To prevent spilling and overfilling associated with product transfer to the UST system, all UST systems with field-constructed tanks and all UST systems with airport hydrant fuel

distribution systems must comply with the spill and overfill prevention equipment requirements specified in rule 335-6-15-.06(c).

(c) Walkthrough inspections. In addition to the walkthrough inspection requirements in rule 335-6-15-.09(2), owners and operators must inspect the following additional areas for UST systems with airport hydrant fuel distribution systems at least once every 30 days if confined space entry according to the Occupational Safety and Health Administration (see 29 CFR part 1910) is not required or at least annually if confined space entry is required, and keep documentation of the walkthrough inspection in accordance with rule 335-6-15-.13(b)11:

1. Hydrant pits – visually check for any damage; remove any liquid or debris; and check for any leaks, and

2. Hydrant piping vaults – check for any hydrant piping leaks.

(d) Methods of release detection for UST systems with field-constructed tanks. Owners and operators of UST systems with field-constructed tanks with a capacity less than or equal to 50,000 gallons must meet the release detection requirements in rules 335-6-15-.14 through 335-6-15-.19. Owners and operators of UST systems with field-constructed tanks with a capacity greater than 50,000 gallons must meet either the requirements in rules 335-6-15-.14 through 335-6-15-.19 (except rule 335-6-15-.17(e) and (f) must be combined with inventory control as stated in subparagraph (2)(d)5. of this rule) or use one or a combination of the following alternative methods of release detection:

1. Conduct an annual tank tightness test in accordance with rule 335-6-15-.17(c) except that the test equipment must be able to detect a 0.5 gallon per hour leak rate;

2. Use an automatic tank gauging system to perform release detection performed at least every 30 days in accordance with rule 335-6-15-.17(d) except that the test equipment must be able to detect a leak rate less than or equal to one gallon per hour. This method must be combined with a tank tightness test performed at least every three years in accordance with rule 335-6-15-.17(c) except that the test equipment must be able to detect a 0.2 gallon per hour leak rate;

3. Use an automatic tank gauging system to perform release detection performed at least every 30 days in accordance with rule 335-6-15-.17(d) except that the test equipment must be able to detect a leak rate less than or equal to two gallons per hour. This method must be combined with a tank tightness test performed at least every two years in accordance with rule 335-6-15-.17(c) except that the test equipment must be able to detect a 0.2 gallon per hour leak rate;

4. Perform vapor monitoring at least every two years in accordance with rule 335-6-15-.17(e) for a tracer compound placed in the underground storage tank system capable of detecting a 0.1 gallon per hour leak rate;

5. Perform inventory control at least every 30 days conducted in accordance with Department of Defense Directive 4140.25; ATA Airport Fuel Facility Operations and Maintenance Guidance Manual; or equivalent procedures that can detect a leak equal to or less than 0.5 percent of flow-through; and

(i) Perform a tank tightness test at least every two years in accordance with rule 335-6-15-.17(c) except that the test equipment must be able to detect a 0.5 gallon per hour leak rate; or

(ii) Perform vapor monitoring or groundwater monitoring at least every 30 days conducted in accordance with rule 335-6-15-.17(e) or (f), respectively, for the stored regulated substance.

6. Use another method approved by the Department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subparagraphs (2)(d)1. through 5. of this rule. In comparing methods, the Department shall consider the size of release that the method can detect and the frequency and reliability of detection.

(e) Methods of release detection for underground piping. Owners and operators of underground piping associated with UST systems with field-constructed tanks less than or equal to 50,000 gallons must meet the release detection requirements in rules 335-6-15-.14 through 335-6-15-.19. Owners and operators of underground piping associated with UST systems with field-constructed tanks and UST systems with airport hydrant fuel distribution systems greater than 50,000 gallons must follow either the requirements in rules 335-6-15-.14 through 335-6-15-.19 (except rule 335-6-15-.17(e) and (f) must be combined with inventory control as stated in subparagraph (2)(e)3. of this rule) or use one or a combination of the following alternative methods of release detection:

1. Perform a semiannual or annual line tightness test in accordance with rule 335-6-15-.18(b) except that the test equipment must be able to perform a test at or above the underground piping operating pressure in accordance with the table below:

Maximum Leak Detection Rate Per Test Section Volume		
Test Section Volume (Gallons)	Semiannual Test - Leak Detection Rate Not To Exceed (Gallons Per Hour)	Annual Test - Leak Detection Rate Not To Exceed (Gallons Per Hour)
< 50,000	1.0	0.5
≥ 50,000 to < 75,000	1.5	0.75
≥ 75,000 to < 100,000	2.0	1.0
≥ 100,000	3.0	1.5

And underground piping segment volumes greater than or equal to 100,000 gallons not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test may be tested at a leak rate up to 6.0 gallons per hour according to the following schedule:

Phase In For Underground Piping Segments ≥ 100,000 Gallons In Volume	
First test	Not later than October 12, 2018 (may use up to 6.0 gph leak rate)
Second test	Between October 12, 2018 and October 12, 2021 (may use up to 6.0 gph leak rate)
Third test	Between October 12, 2021 and October 12, 2022 (must use 3.0 gph for leak rate)
Subsequent tests	After October 12, 2022 (begin using semiannual or annual line testing according to the *Maximum Leak Detection Rate Per Test Section Volume* table above)

2. Perform vapor monitoring at least every two years in accordance with rule 335-6-15-.17(e) for a tracer compound placed in the underground storage tank system capable of detecting a 0.1 gallon per hour leak rate;

3. Perform inventory control at least every 30 days conducted in accordance with Department of Defense Directive 4140.25; ATA Airport Fuel Facility Operations and Maintenance Guidance Manual; or equivalent procedures that can detect a leak equal to or less than 0.5 percent of flow-through; and

(i) Perform a line tightness test at least every two years conducted in accordance with rule 335-6-15-.18(b) and subparagraph (2)(e)1. of this rule using the leak rates for the semiannual test; or

(ii) Perform vapor monitoring or groundwater monitoring at least every 30 days conducted in accordance with rule 335-6-15-.17(e) and (f), respectively, for the stored regulated substance;

4. Use another method approved by the Department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subparagraphs (2)(e)1. through 3. of this rule. In comparing methods, the Department shall consider the size of release that the method can detect and the frequency and reliability of detection.

(f) Recordkeeping for release detection. Owners and operators of UST systems with field-constructed tanks and UST systems with airport hydrant fuel distribution systems must maintain release detection records according to the recordkeeping requirements in rule 335-6-15-.19(b)3.

(g) Applicability of closure requirements to previously closed UST systems. When directed by the Department, the owner and operator of an UST system with field-constructed tanks or UST systems with airport hydrant fuel distribution system permanently closed before December 8, 2017 must assess the excavation zone and permanently close the UST system in accordance with rules 335-6-15-.34 through 335-6-15-.37 if releases from the UST system may, in the judgment of the Department, pose a current or potential threat to human health and the environment.

Author: Curt Johnson, Lee Davis.
Statutory Authority: Code of Alabama 1975, § 22-36-3.
History: Effective: December 8, 2017; **Amended:** Filed: October 23, 2018; Effective: December 7, 2018.

335-6-16-.09 Scope of Tank Trust Fund Coverage.

(1) The Tank Trust Fund will provide to eligible UST or AST owners or operators coverage for the reasonable cost of response actions and for compensation of third parties for bodily injury and property damage resulting from accidental releases arising from the operation of an UST or AST which stores motor fuels.

(2) The financial responsibility requirements for eligible UST owners or operators will be $5000 for UST owners or operators per occurrence and $10,000.00 per occurrence for AST owners or operators for taking response actions and compensation of third parties, unless another amount is established by the Commission.

(3) The monies expended from the Tank Trust Fund to eligible UST owners or operators for response actions may be disbursed only up to such sum as will cause the Resource Conservation and Recovery Act, Subtitle I, the Superfund Amendments and Reauthorization Act of 1986, and other federal laws governing disbursements of federal funds for clean up and/or third party claims to come into effect.

(4) "Per Occurrence Indemnification Limit." The total amount of reimbursement available from the fund as a result of a release from underground or aboveground storage tanks shall not exceed under any circumstance the per occurrence indemnification limit established under this rule, which shall be determined by the commission upon recommendation of the trust fund management board, on an annual basis. In no event shall combined claims against the fund for payment of response actions and third-party claims exceed the per occurrence indemnification limit.

(a) If the per occurrence indemnification limit is increased, such increased limit shall be available for response actions costs and/or third party claims as to those existing sites that are eligible for trust fund benefits, but such increased limits shall not be available to existing sites where the department, as of the effective date of such increase, has issued a No Further Action Letter.

(b) Beginning December 7, 2018, the per occurrence indemnification limit is set at one million, seven hundred fifty thousand dollars ($1,750,000), less the applicable deductible.

(5) The indemnification limit of the Tank Trust Fund with respect to satisfaction of third party claims shall be in the following amounts:

(a) For owners and operators of motor fuels underground and aboveground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of motor fuels per month based on annual throughput for the previous calendar year; $1 million per occurrence,

(b) For all other owners and operators of motor fuels underground and aboveground storage tanks; $500,000 per occurrence;

(c) For owners and operators of 1 to 100 motor fuels underground and aboveground storage tanks, $1 million annual aggregate; and

(d) For owners and operators of more than 101 motor fuels underground and aboveground storage tanks, $2 million annual aggregate.

(6) The Tank Trust Fund will provide to eligible UST or AST owners or operators coverage for the reasonable cost of response actions required by the Department, where that owner or operator's UST or AST system was found not to be the source of the release which prompted the Department's requirement for the response action.

(7) The financial responsibility requirements for eligible UST or AST owners as described in paragraph (2) above of this Rule, shall upon approval by the Commission, be waived.

Author: Sonja Massey, James Stevens and Gregory Stephens.
Statutory Authority: Code of Alabama 1975, §§ 22-35-4, 22-35-5, 22-35-7.
Effective: June 1, 1989. **Amended:** Effective: June 1, 1994; Amended: Effective: January 1, 2010; **Amended:** Effective: November 26, 2013; **Amended:** Effective: January 1, 2014; **Amended:** Effective: October 1, 2015; **Amended:** Filed: October 23, 2018; Effective: December 7, 2018.